

**ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

<b>Metropolitan Alliance of Police, Geneva</b>	)	
<b>Police Sergeants Chapter #312,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	<b>Case No. S-RC-21-039</b>
	)	
<b>City of Geneva,</b>	)	
	)	
<b>Employer.</b>	)	

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

On February 17, 2021, the Metropolitan Alliance of Police (“the Petitioner” or “the Union”) filed a majority interest petition in in Case No. S-RC-21-039 with the State Panel of the Illinois Labor Relations Board (the “Board”) seeking to represent all peace officers holding the rank of Sergeant employed by the City of Geneva (the “City” or “the Employer”). As of the date of the filing of the petition, there were seven peace officers holding that rank in the City’s Police Department, consisting of five Patrol Sergeants, one Detective Sergeant, and one Administrative Sergeant.

Following the filing of the petition, the Employer filed objections to the inclusion in the bargaining unit of the petitioned-for employees, contending that all of the Sergeants fell within the supervisory exclusion under Section 3(r) of the Act and/or the confidential employees exclusion under Section 3(c) of the Act.

Following the filing of the Employers’ objections, an Order Scheduling Hearing for December 13 and 14, 2021 was issued on October 19, 2021. A Joint Pre-Hearing Memorandum was filed by the parties on December 6, 2021, and one day of hearing was held by Webex video conferencing pursuant to the Order Scheduling Hearing. By agreement of the parties, an Order

Scheduling Continuation of Hearing for February 10 and 11, 2022 was issued on January 7, 2022, and an Order Rescheduling the Continuation of the Hearing for February 24 and 25, 2022 was issued on January 31, 2022. The continuation of the hearing then was held as scheduled on February 24 and 25.

Both parties appeared at the hearing, with the Petitioner appearing by Joseph R. Mazzone and the Employer appearing by Kelly A. Coyle, of Clark Baird Smith, LLP. The parties were given a full opportunity to participate, adduce relevant evidence, and examine witnesses. Written briefs were filed by both parties and submitted on May 20, 2022. Accordingly, based on the testimony, evidence and arguments submitted by the parties before, during, and after the hearing, and upon the entire record of this case, I recommend the following.

**I. PRELIMINARY FINDINGS**

**A.** The City is a public employer within the meaning of Section (o) of the Act.

**B.** The Petitioner is a labor organization within the meaning of Section 3(i) of the Act.

**C.** The Board has jurisdiction to hear this case pursuant to Sections 5(b) and 20(b) of the Act.

**II. ISSUES AND CONTENTIONS**

The City contends that the Sergeants qualify as statutory supervisors and are thus excluded from collective bargaining under Section 3(r) of the Act. The record establishes, the City asserts, that the Sergeants' principal work is substantially different from the work of their subordinates, that each of the Sergeants exercises authority to effectuate or effectively to recommend at least one of the actions enumerated in Section 3(r), and that each of these

Sergeants exercises independent judgment in the course of effectuating or recommending those actions.

The City also contends that the Administrative Sergeant is a confidential employee under Section 3(c) of the Act, allegedly because he, in the regular course of his duties, assists and acts in a confidential capacity to the Chief of Police as a person who formulates, determines, and effectuates management policies in regard to labor relations. The City contends, in addition, that the Administrative Sergeant is a confidential employee because he, in the regular course of his duties, allegedly has authorized access to information concerning matters specifically related to the collective bargaining process.

The Petitioner contends that the Sergeants employed by the City in its Police Department are public employees within the meaning of Section 3(n) of the Act and that the City has failed to meet its burden of showing that the Sergeants are excluded from collective bargaining because they are supervisors within the meaning of Section 3(r) of the Act or because, in the case of the Administrative Sergeant, he is a confidential employee within the meaning of Section 3(c) of the Act. With respect to the claimed supervisory exclusion, the Petitioner denies that the evidence presented at the hearing establishes that the work performed by the Sergeants is substantially different from the work performed by their subordinates. The Petitioner contends, in addition, that the Employer has not adduced evidence sufficient to establish that the Sergeants have authority in the interest of the employers to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, or that they consistently utilize independent judgment in the exercise of the functions enumerated in Section 3(r). With respect to the claimed confidential exclusion, the Petitioner contends that the Administrative Sergeant is not a confidential

employee under either the labor-nexus or authorized access test in that his duties are exclusively administrative in nature.

### **III. FINDINGS OF FACT**

#### **A. The City and Its Police Department**

The City of Geneva has s 2020 census population of 21,393 and is located in Kane County, Illinois. The City’s Police Department is headed by Chief Eric Passarelli, a 27-year veteran of the Department with five years of service as Police Chief. Under the Chief are two divisions, the Police Operations Division and the Police Services Division, each of which is headed by a Commander.<sup>1</sup> The Chief of Police and the Commanders, referred to generally as the “Command Staff”), work an administrative schedule, from 7 a.m. to 5 p.m. Monday through Friday. The Commanders, however, are “on call” during times outside their regular work schedules, with the Commanders rotating on call time every other week. The on call policy requires the on-call Commander to be reachable by phone within an hour’s response time and be available to come in to Police Department headquarters to provide such assistance as may be required. The Department has a notification policy that provides guidance as to when a Sergeant should call the on-call Commander.

The Police Operations Commander is Brian Maduzia, a 23-year veteran of the Department. That Division is responsible for the uniformed services provided by the Department, including traffic enforcement, responding to 911 calls for service, and other municipal safety and security responsibilities. The Police Services Commander is Mike Frieders, a 26-year veteran of the Department. That Division is responsible police records, police

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<sup>1</sup> In its post-hearing brief, the City advises that the title of Commander recently has been changed to Deputy Chief.

investigations, parking enforcement, coordination of special events, and such tasks as liquor license renewal and background investigations.

Under the Commanders in the organizational structure of the Department are the Sergeants, consisting of five Patrol Sergeants, one Detective Sergeant, and one Administrative Sergeant. The Sergeants are considered to be supervisors by the City, but their status as statutory supervisors is contested by the Petitioner in this proceeding.

At the time of the hearing, the City employed 19 patrol officers and had hired three new officers who had not yet gone to the Police Academy for initial training. In addition to patrol officers, the Department employs three general assignment detectives, a school resource officer who is also a detective, and an officer who is an agent with the North Central Narcotics Task Force. Police officers below the rank of Sergeant are represented for collective bargaining by the Fraternal Order of Police Labor Council (the "FOP"); the collective bargaining agreement between the City and the FOP ("the FOP Contract") was admitted as a joint exhibit at the hearing. Sergeants are paid an average of \$13,000 per year more than police officers.

Within the Police Operations Division, police officers assigned to patrol work three eight-hour shifts per day, consisting of a day shift from 7:00 a.m. to 3:00 p.m., an afternoon shift from 3:00 p.m. to 11:00 p.m., and a midnight shift from 11:00 p.m. to 7:00 a.m. Three patrol officers and one Sergeant are assigned to the day shift; four officers and one Sergeant are assigned to the afternoon shift, and three officers and one Sergeant are assigned to the midnight shift. One of the Patrol Sergeants works an 8-hour shift, five days per week, while the other three Patrol Sergeants work 10-hour shifts, four days per week. The 10-hour shift provides for overlap between 3:00 and 5:00 p.m. and between 10:00 p.m. and midnight so as to allow the

Sergeants working 10-hour shifts more time to perform transition duties between the day shift and the afternoon shift and between the afternoon shift and the midnight shift.

The authorized minimum number of patrol officers per shift is three, not including the Patrol Sergeant. Sometimes the Department operates on a short-staffed basis because of illness or other excused absence reasons. On other occasions, a shift will operate with more than the usual number of officers, in which case an officer may be assigned to bicycle or foot patrol, or to a two-officer unit, or perhaps to a “robber unit”, the term used to describe a situation in which the patrol officer roams the City on an at-large basis, or to an “I.D.” unit that has primarily traffic-stop duties.

Police patrol officers are responsible for patrolling four geographical areas – or “beats” within the City. Beats are designated as Beat 1, Beat 2, Beat 4, and Beat 10. By direction of the Command Staff, patrol officers rotate beat assignments, so that, in normal circumstances, a patrol officer will be assigned to a different beat on day 2 of his shift schedule than he<sup>2</sup> was assigned to work on day 1.

The Sergeants assigned to the Police Services Division are the Detective Sergeant and the Administrative Sergeant. The Detective Sergeant is Sergeant Matt Dean. He is responsible for overseeing the four detectives assigned to the Investigations Unit of Police Services, including three general assignment detectives and the detective assigned to the school resources officer position at Geneva High School. The Detective Sergeant works an administrative schedule, generally from 8:30 to 4:30, five days per week. The detectives work varying schedules. One detective works 9:00 to 5:00, another works 8:00 to 4:00, and one of the detectives works from 1:00 p.m. to 9:00 p.m. The detective assigned to serve as the school resource officer works a

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<sup>2</sup> When used generally, rather than in regard to a specific individual, the masculine pronoun shall also be deemed to include the feminine.

schedule compatible with school hours and then, when school is not in session, he works out of the Police Department offices with a responsibility for being the juvenile detective for the Department.

Minimum staffing for detectives in the Police Services Division during the regular workday is two detectives per day, including Sergeant Dean. The Division is not allowed to go below that authorized minimum without permission from the Command Staff.

The Administrative Sergeant is Sergeant Eli Rivera. His responsibilities include oversight over the field training program for officers, conducting background investigations for all City employees, oversight over the property room and the vehicle fleet, and responsibility for liquor license background checks and renewals. Sergeant Rivera works an administrative schedule.

## **B. The Sergeants**

### **1. Promotion to Sergeant**

Police officers in the City of Geneva are promoted to the rank of Sergeant by means of a promotional process coordinated by the City's Board of Fire and Police Commissioners. When an officer decides to seek promotion, he takes a competitive examination and then is evaluated by means of a promotional appraisal conducted by the Department's Command Staff and Sergeants. Chief Passarelli testified that, in that promotional appraisal, the evaluators are looking for, among other things, a candidate's ability to lead and his performance as a patrol officer. Upon being promoted, a new Sergeant receives training specific to his new position.

### **2. Annual Evaluations and Staff Meetings**

Sergeants are evaluated annually with respect to various categories of performance, including leadership traits and managerial skills. Once a month, all seven Sergeants, the two

Commanders and the Police Chief attend a staff meeting. At staff meetings, the group learns of employee issues, forthcoming changes in the law, policy revisions that are needed, and other information that allows the “the sergeants and the administration to touch base on how things are going throughout the department.”

### **3. Professional Fine-Tuning**

The Geneva Police Department utilizes a form of performance documentation called “professional fine-tuning.” Chief Passarelli testified that such documentation is “utilized to assist the sergeants when they’re completing performance evaluations, and in addition, they’re held for that year of the evaluation process and that if an officer happens to be repeating behavior that’s continually written up in a professional fine-tuning, it could lead to progressive discipline.” Professional fine-tuning documentation can be used to compliment, as well as criticize, an officer’s performance. Chief Passarelli testified that Sergeants “have the discretion to do a performance documentation form to address a coaching or fine-tuning or a job well done by the officer.”

### **4. Grievance Handling**

Under the FOP Contract, Sergeants are designated as Employer representatives at the first step of the grievance procedure.

### **5. Patrol Sergeants**

Prior to his assigned shift, a Patrol Sergeant talks with the Sergeant responsible for the outgoing shift in order to determine whether any situations or issues are ongoing from the prior shift or that may arise on his shift. The outgoing shift Sergeant is responsible for initial staffing of the oncoming shift, including making beat assignments to the patrol officers who will be working that shift, although the oncoming shift Sergeant has the authority to change beat

assignments as needed. The authorized minimum number of patrol officers per shift is three, and the outgoing shift Sergeant has the authority to call in officers to work the oncoming shift if necessary to meet minimum staffing requirements. A Patrol Sergeant may operate his shift with below-minimum staffing, but only with Command Staff approval.

The Patrol Sergeant begins his shift by conducting roll call. Although, as Commander Maduzia testified, “[e]verybody does it a little bit differently,” the shift Sergeant typically will go over Department policies and any issues that may have come up in the prior shift, and then give out beat assignments to the patrol officers. If an officer has an outstanding report that he must complete, the Sergeant may give that officer time to complete the report and will make sure that other officers on the shift know that that officer will be occupied for awhile before beginning his patrol duties. While Commander Maduzia may direct a Patrol Sergeant to cover a particular topic, Patrol Sergeants generally determine the subjects they will cover during roll call.

Once roll call is completed, officers go to their squad cars, check them for operability, safety, and equipment needs, and begin patrol duties in one-officer squad cars. Patrol officers drive sedans equipped so as to be able to transport or temporarily detain prisoners or suspects; the Patrol Sergeant drives an SUV (Tahoe or Yukon) containing a command box with a white board in the back of the SUV but with no prisoner transportation capability. The SUV has the same exterior markings as a patrol officer’s squad car.

Generally, squad cars are assigned to officers based upon a seniority-based preference system, although the Patrol Sergeant has the authority to change squad car assignments.

Typically, once the patrol officers have begun patrol duty, the Patrol Sergeant reviews reports from the officers and makes the beat assignments for the upcoming shift, usually by rotation.

Once those tasks are completed, the Sergeant typically has the option of going out in response to

calls or to make traffic stops, or remaining in the station, but the Sergeant in any case is expected to back up the patrol officers on the street and provide such direction as may be necessary to ensure that the officers are performing their duties correctly. Patrol Sergeant Brad Jerdee testified that he spends about one-third of his time on the street and the rest of his time performing other duties.

Calls for police service go to Tri-Com, the multi-jurisdictional dispatch agency that serves Geneva, Batavia, and St. Charles, as well as Elburn and Sugar Grove. Tri-Com dispatchers are provided with patrol car and beat assignments prior to the beginning of each shift and a dispatcher typically will direct a call for service to the patrol officer assigned to the beat from which the call arose. If the officer to whom the dispatch call is directed is busy on another call, the call will go to a call stack, and it then becomes the Patrol Sergeant's responsibility to determine, based primarily on the severity of the call, how the call will be handled, including whether to pull the dispatched officer off his call, to redirect the call to another officer, or perhaps to handle the call himself. The Patrol Sergeant also has the authority in emergency situations to call for help from other jurisdictions.

Patrol Sergeants are responsible for monitoring the work of the patrol officers during each shift, including video monitoring. Sergeant Jerdee testified that "[w]e're required to review videos of the officers that are assigned to us to make sure to spot-check that they're conducting themselves appropriately while on traffic stops."

## **6. The Detective Sergeant**

Detective Sergeant Dean has oversight responsibility with respect to the detectives in the Investigations Unit of the Police Services Division. Sergeant Dean and the detectives are primarily responsible for investigating criminal cases that are generated by patrol officers and

that need extensive follow-up. The average case load for a detective is five to six cases, while Sergeant Dean carries a case load of three to four in addition to his administrative responsibilities relating to scheduling and reviewing detectives' reports before sending them to Commander Frieders for further review. The review of detectives' reports is similar to the review of police reports conducted by a Patrol Sergeant, mainly relating to grammar and compliance with Department policy. However, inasmuch as detective reports relate to criminal investigations, there is a legal compliance element that must be honored.

Although three of the detectives are considered to be general assignment detectives, two of the detectives have specialty assignments. One of the detectives is assigned to the Internet Crimes Against Children ("ICAC") Task Force, and another detective is assigned to the Kane County Major Crimes Task Force, which is responsible for investigating a major incident, such as a murder, that involves a County-wide callout for assistance.

Sergeant Dean assigns the cases for investigation within the Unit, including the assignment of cases to himself and to patrol officers, and has the authority to reassign cases based on caseload. Although Commander Frieders testified that Sergeant Dean is not required to carry a caseload, Sergeant Dean at the time of the hearing was carrying an investigations case load not substantially lighter than the case load carried by the general assignment detectives. As to that fact, Commander Frieders testified that "Detective Sergeant Dean feels that there are times where he can assist his detectives by carrying his own caseload and therefore, reducing the workload of his subordinates."

In assigning cases, Sergeant Dean testified that he physically hands the detective a folder that includes the original patrol officer's case report and any other documents that are relevant to the case and included in the folder. He also enters the information into the computerized records

system to indicate which detective has been assigned the case, and he reviews that information regularly.

Commander Frieders testified that the Detective Sergeant's "responsibility is to read every report and determine at their level where it goes. They have absolute control and management and oversight of if a case gets followed up and who does it. That assignment can not only go to a detective that the detective sergeant has the ability to assign [but can go] back to the division of Patrol and assign that back to a patrol officer, and that authority rests at the detective sergeant level." In one instance, Commander Frieders testified, Detective Sergeant Dean assigned a case to a patrol officer despite Commander Frieders' misgivings about the assignment.

According to Commander Frieders, who was the Detective Sergeant immediately preceding Sergeant Dean, "[t]he detective sergeant has direct control of ... the detectives' schedule throughout the day, so all of their time-off requests go to the detective sergeant. The detective sergeant will approve those allow for personal time off or PTO, change the schedule.... The sergeant also has to approve any overtime at his level. The detective sergeant also has the ability to flex detectives as needed to adjust [the detectives' hours of work]." Commander Frieders testified that the Investigations Unit is Sergeant Dean's "unit to run and control, and if he feels that there's a need for overtime, even if it involves a detective coming in on a Saturday, I'm more than fine with that happening."

In regard to scheduling, Sergeant Dean testified that he and the other Sergeants are strongly encouraged to persuade officers to use flex time rather than put in for overtime. Even though the FOP contract provides for payment of overtime to officers, the officers in almost all circumstances respect the Sergeants' requests and use flex time rather than claiming overtime.

The testimony, however, establishes that there were two occasions in which there was a dispute, or potential dispute, regarding overtime. On one of these occasions, a detective contended that, in accordance with the FOP contract, he was entitled to overtime. Although Sergeant Dean had discussions with the Command Staff about the situation, no grievance resulted because the detective ended up not putting in for overtime pay.

On the other occasion, a detective requested overtime for an after-hours telephone call. When this was denied, the detective filed a grievance. Sergeant Dean sought advice from Commander Frieders, who told him to talk with the detective to see if she would withdraw the grievance. If she did not, the Commander advised Sergeant Dean to deny the grievance at his level and let the grievance procedure pursue its course. After talking with the detective, Sergeant Dean denied the grievance but the detective did not pursue the grievance any further.

The Department's school resource officer (SRO) also reports to Sergeant Dean. Commander Frieders testified that "[t]he detective sergeant ... is the primary contact for the schools, generally, not just the high school, but other schools within the district that's covered by the City of Geneva...." The schools, he testified, "will reach out to Sergeant Dean in his capacity as the detective sergeant based on that relationship he has with the SRO...." On one occasion, a school official reported to the detective who was at that time the SRO that a Geneva detective had had left a voice mail message with a school employee in which the detective had used an obscene word. The SRO contacted Sergeant Dean, who consulted with Commander Frieders, then spoke with the detective and issued a professional fine-tuning document advising her that her language was inappropriate and that off-duty conduct can reflect unfavorably on the Department.

While Detective Sergeant Dean testified that his duties are not substantially different from those of the detectives who report to him, he also testified that it would not be accurate to say that there is no distinction between his duties and those of the detectives in the Unit. “[O]utside of the OIC [Officer-in-Charge],” he testified, “the detectives don’t assign their own cases.” In addition, he testified, there are other functions that he performs that detectives do not perform, including reviewing concealed carry licenses, review of asset forfeiture proceedings, and submission of information to the State Police. With respect to the OIC, Sergeant Dean testified that, while the OIC would perform many of the functions of the Detective Sergeant in the latter’s absence, the OIC would not have the authority to reassign cases within the Unit.

Detective Sergeant Dean also testified that, while he does investigate cases, investigations “would probably be the least of what I do on a typical day.” The amount of time, he testified, “kind of depends on the week and how busy things are. You know, generally, probably a few hours out of the day ... or at least one hour out of the day for patrol reports that have come in ... over the course of the weekend or the time that I had been off, and the supplemental reports all get reviewed by me, so whether that’s done by a detective or a patrol officer, I review all of those reports as well.” With respect to the supplemental reports, Sergeant Dean testified that he reviews them to determine whether or not there has been an adequate investigation, although he doesn’t “kick those back to the detectives very often.”

With respect to performance evaluations, Sergeant Dean testified that “I will do all the detectives by myself without any sort of consultation from anybody else or any other sergeants with the exception of maybe – we do have an officer who was part of a regional narcotics team, so I may ask for some recommendations from the supervisors on that team to see how that officer, detective, is performing on a daily basis....” Sergeant Dean testified, however, that there

was one occasion in which Commander Frieders gave substantive edits on performance evaluations, suggesting that one detective should have a higher score and another detective should have a lower score. Sergeant Dean changed the evaluations accordingly.

## **7. The Administrative Sergeant**

Administrative Sergeant Eli Rivera performs a variety of administrative functions in a role that Chief Passarelli called a “catch-all position.” One of his responsibilities is oversight over the Department’s field training program, which is the program that uses veteran police officers who have assumed the role of “field training officers” or “FTO’s” to provide necessary training to new Geneva police officers. Chief Passarelli testified that Sergeant Rivera “coordinates all aspects of it,” including doing pre-hire background checks, scheduling of field training officers, conducting biweekly meetings with new recruits, assigning the recruits to specific FTO’s and shifts, and ultimately participating on the assessment panel that decides, collectively, whether or not a recruit will be successful in completing the program. According to Commander Maduzia, Sergeant Rivera also makes recommendations as to which veteran officers will be selected as FTO’s and that he accepts those recommendations about 75% of the time.

Sergeant Rivera also conducts the background investigations for City employees, performs background investigations in connection with liquor license applications, oversees the property room, and is responsible for the Department’s vehicle fleet, including arranging for necessary repairs.

In addition, Sergeant Rivera participated on behalf of the City in the last round of negotiations with the FOP because he was the next officer in line to be appointed to the position of Commander if and when a vacancy arose. In that regard, he received documentation from City officials regarding bargaining and sat in on preliminary discussions involving the City’s

bargaining team, although he claimed in testimony that he did not remember much of what was discussed. He did not sit in on the bargaining sessions themselves but did sit in on one mediation session.

#### **IV. DISCUSSION AND ANALYSIS**

##### **A. The Supervisory Exclusion**

Section 3(r) of the Act excludes a “supervisor” from the definition of “public employee” contained in Section 3(n) of the Act. “The purpose of such an exclusion is to ensure that ‘pro-union bias will not impair the supervisor’s ability to apply the employer’s policies to subordinates according to the employer’s best interests.’” *Chief Judge of the Circuit Court v. American Federation of State, County and Municipal Employees, Council 31*, 153 Ill.2d 508, 515 (1992) (“*Chief Judge*”), quoting *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill.2d 499, 506 (1990) (“*City of Freeport*”).

The Act establishes a three-part test to determine whether a peace officer employee is a supervisor under Section 3(r). Under that test, an individual is a supervisor if he or she (1) performs principal work substantially different from that of his or her subordinates; (2) possesses authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in Section 3(r); and (3) consistently uses independent judgment in exercising supervisory authority. *City of Freeport*, 135 Ill.2d at 512.

The party claiming a supervisory exclusion, in this case the Employer, has the burden of proving the exclusion by a preponderance of the evidence. *Secretary of State v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4<sup>th</sup>) 111075, ¶ 55; *Village of Homewood*, 25 PERI ¶ 137 (IL LRB-SP 2009). All three parts of the statutory test must be met in order for the party claiming the exclusion to establish supervisory status for peace officers.

The first prong of the supervisory status analysis involves a determination as to whether the alleged supervisors' principal work is substantially different from that of their subordinates. *City of Freeport*, at 514. The initial consideration is whether the work of the sergeants is "obviously and visibly" different from that of their subordinates. *Id.* If so, then the principal work requirement is satisfied.

If the work is not obviously and visibly different, that is, if it is facially similar to the work of the alleged supervisor's subordinates, then the determinative factor in such an inquiry is whether the "nature and essence" of the alleged supervisor's function is very different from that of his subordinates. *Id.* "The nature and essence test [is] a qualitative, rather than a quantitative analysis." *Id.* at 518. Under the "nature and essence" test, the Board examines "the manner in which the alleged supervisor performed his work, his rank within the supervisory hierarchy and the extent to which he exercised supervisory authority over his subordinates." *Id.*

In order to satisfy the second and third prongs of the supervisory status analysis, the Employer must establish that the employees at issue have the authority in the interest of the Employer to perform or effectively recommend at least one of the following actions constituting the statutory indicia of supervisory status, namely, the authority to: hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances. With respect to any of the actions claimed to support supervisory status, the Employer must show that the employees at issue exercise that authority with independent judgment. "Independent judgment" involves a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature. *Id.*, at 521 and 531. However, it is the *authority* to use independent judgment, not the number of times that it is used, that is important. *Id.*, at 521.

In addition, in evaluating a claim of supervisory status in cases involving peace officers, Section 3(r) of the Act provides that “[t]he Board shall consider, as evidence of bargaining unit inclusion or exclusion, the common law enforcement policies and relationships between police officer ranks and certification under applicable civil service laws, ordinances, personnel codes, or Division 2.1 of Article 10 of the Illinois Municipal Code, but these factors shall not be the sole or predominant factors considered by the Board in determining police supervisory status.” See *City of Sandwich v. Illinois Labor Relations Board, State Panel, et al.*, 406 Ill.App.3d 1006, 1011 (2<sup>nd</sup> Dist. 2011) (“*City of Sandwich*”). Among the factors to be considered in accordance with this statutory mandate are the extent to which, if at all, the alleged supervisor is considered to be a supervisor by himself and his subordinates, the pay differential between alleged supervisors and subordinates, and the extent to which, if at all, a determination that the employees at issue are not supervisors would leave the police department without supervision for a significant period of time. *City of Freeport*, 135 Ill.2d at 522.

**B. Analysis: Supervisory Status**

*The Sergeants in the Geneva Police Department, except for the Administrative Sergeant, are “supervisors” within the meaning of Section 3(r) of the Act.*

**1. Principal Work**

The Employer contends that the work of the Sergeants, including the Patrol Sergeants, the Detective Sergeant, and the Administrative Sergeant, is obviously and visibly different from the work of their subordinates and that the “nature and essence” of their work is also different. The Petitioner contends that the Sergeants’ work is neither obviously and visibly different from that of the patrol officers nor is it meaningfully different in terms of the nature and essence of the work.

*a. Patrol Sergeants*

The Petitioner asserts that “[Patrol] Sergeants answer calls for service, have police reports, make traffic stops and handle citizen complaints,” just like patrol officers. In addition, the Petitioner notes, Patrol Sergeants and patrol officers have annual productivity categories such as traffic stops, crime prevention notices, and community contacts, although the record reflects that the productivity requirements for patrol officers are significantly higher than they are for Sergeants. For example, Sergeant Jerdee testified that, as a Sergeant, he is required to make 50 traffic stops per year, while a police officer’s yearly requirement is 220 traffic stops.

Commander Maduzia testified that the reason that Patrol Sergeants have productivity standards at all is that the Command Staff does not want Patrol Sergeants to lose the skill set they developed as patrol officers. “So we like to have them be productive and still maintain some type of productivity standard, so that they are able to ... keep up with what the officers are doing.”

While it is quite evident that Patrol Sergeants and patrol officers perform some of the same functions, it is also evident from the record that Patrol Sergeants perform basic police patrol duties as an auxiliary function, while patrol officers perform those duties as a primary function. Commander Maduzia testified that Patrol Sergeants “have the general oversight of the shift, [disbursement] of resources, handling calls for service, making sure the officers are doing what they’re assigned to do.” In estimating the percentage of time that he spends on patrol duties, Sergeant Jerdee testified that, ideally, he would spend one-third of his time on those duties. He testified, however, that the time spent on patrolling “varies based on my other responsibilities that I have. I have a lot of other duties within the department for training or follow-up that require me to do a lot of clerical work.”

Among these other duties are reviewing and, if necessary, “kicking back” patrol officers’ reports for grammatical or policy errors, engaging in mentoring or remedial training conversations with patrol officers, drafting annual and mid-year performance evaluations of officers and documenting incidents for performance evaluation purposes by means of professional fine-tuning documentation and internal memoranda. The record also shows that the Sergeants communicate frequently with their Commanders, both in terms of seeking advice and guidance and in terms of advising them of particular developments and situations. All of these duties help to account for the time-usage differences between Sergeants and patrol officers.

The Board has found that the performance of such administrative tasks is sufficient to warrant a determination that a petitioned-for employee’s work is substantially different in nature and essence from the work performed by his or her subordinates. *State of Illinois Department of Central Management Services (Department of Public Health)*, 27 PERI ¶ 10 (IL LRB-SP 2011), *aff’d sub nom. State of Illinois Department of Central Management Services v. Illinois Labor Relations Board*, 2012 IL App (4<sup>th</sup>) 110209 (“*Department of Public Health*”) (finding that Regional Managers, although not statutory supervisors, performed “many administrative duties not required of their subordinates”); *County of Cook and Sheriff of Cook County*, 15 PERI ¶ 3022 (IL SLRB 1999).

The Petitioner argues, however, that patrol officers perform similar functions to those performed by Sergeants when they act as “officer-in-charge” or “OIC”, pursuant to the terms of the FOP contract. But the record indicates that an OIC does not act entirely without oversight from a Sergeant. Rather, there is a designation in the Department known as an “OIC liaison,” which, as Chief Passarelli testified, is a Sergeant assigned to an OIC “to assure that they’re receiving information that’s pertinent to their ability to step up when a sergeant is not here, so if

there's policies that need to be covered, if there's specific patrol-related issues that may impact them, then the sergeant gets them up to speed on those issues.”

Moreover, as the Employer notes, a patrol officer's service as an OIC is a temporary assignment that does not require the OIC to assume the full authority of the Sergeant's position, including the responsibility to conduct performance evaluations, issue professional fine-tuning documentation, and attend monthly Command Staff meetings. Because an OIC does not assume full accountability for the functioning of the position of Sergeant, and because the duties of a Patrol Sergeant and a patrol officer are otherwise obviously and visibly different, I find that the principal work test is met here.

In addition, I find that the duties of a Patrol Sergeant and a patrol officer are substantially different in nature and essence. Noting that Patrol Sergeants “as a body have many duties that officers do not have,” the Appellate Court in *Metropolitan Alliance of Police v. Illinois Labor Relations Board*, 362 Ill. App. 3d 469, 476-477 (2<sup>nd</sup> Dist. 2005) (“*Metropolitan Alliance of Police*”) found that the “supervisory and administrative aspects” of the position of Sergeant “distinguish the sergeants’ work in nature and essence from the work of officers,” citing *City of Freeport*, 135 Ill.2d at 519. “Also significant,” the Appellate Court said, “is the fact that sergeants, not officers, are the highest command authorities present on nights and weekends when the chief and his deputies are not on duty,” citing *City of Freeport*, at 519 and *Village of Glen Carbon*, 8 PERI ¶ 20 (IL SLRB, 1992).

***b. The Detective Sergeant***

Detective Sergeant Dean testified that his work is not substantially different from that of a detective. But he also testified that it would not be accurate to say that there is no distinction between his work and that of the detectives reporting to him. The record bears that out. While

Sergeant Dean has a caseload, he acknowledged that his investigations work “would probably be the least of what I do on a typical day.” As is the case with Patrol Sergeants, the Detective Sergeant’s administrative responsibilities outweigh, in quantitative terms, the time spent doing the investigative work that other detectives do. Moreover, in qualitative terms, those administrative responsibilities, including case assignments, case record reviews, scheduling, performance evaluations and other oversight responsibilities, enable the Detective Sergeant to serve as an essential linchpin between the Command Staff and the detectives. Accordingly, as in the case of Patrol Sergeants, I find that the work of the Detective Sergeant is obviously and visibly different from the work of the detectives who report to him and that the nature and essence of that work is substantially different. Accordingly, the principal work test is met as to the Detective Sergeant.

*c. The Administrative Sergeant*

The record establishes that Sergeant Rivera’s duties, as the job title suggests, are primarily administrative in nature. Those duties are substantially different in nature and essence both from the primary performed duties performed by police officers and from other Sergeants. *Department of Public Health*. Accordingly, the principal work test is met with respect to the Administrative Sergeant.

**2. Supervisory Indicia and Independent Judgment: Patrol Sergeants and the Detective Sergeant**

*a. Authority to Hire, Transfer, Lay Off, Recall, Promote, or Reward*

The record contains no evidence that the Geneva Police Department Sergeants have authority, in the interest of the employer, to hire, lay off, recall, promote, or reward employees, or effectively to recommend such personnel actions.

**b. Authority to Suspend or Discharge**

The record is clear that Sergeants have no authority to suspend or discharge employees, and the City does not contend otherwise.

**c. Authority to Discipline**

Sergeants do not have the authority to discipline.

The City contends that the Sergeants and the Detective Sergeant have the authority to discipline subordinate employees and that they use independent judgment in doing so. The record does not establish that the Administrative Sergeant has the authority to discipline, and the City does not contend otherwise.

In order 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 (2<sup>nd</sup> 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).

In this case, the issue of the Sergeants’ authority to discipline officers rests upon a determination as to whether professional fine-tuning is discipline within the meaning of the Act. The record is clear that no Sergeant has ever issued a verbal or written reprimand to an officer;

the only verbal and written reprimands contained in the record were issued by Chief Passarelli. Moreover, there is some question as to a Sergeant's authority, irrespective of whether it has been exercised, to discipline officers. Chief Passarelli testified that Sergeants do have that authority, but Commander Maduzia, when asked if Sergeants have the discretion or authority to issue officers under their command a written oral reprimand, responded that "I don't believe they do that." When questioned further, Commander Maduzia testified that "the performance document for the most part is somewhat of an oral written reprimand...."

While the record is clear that a Sergeant, other than the Administrative Sergeant, has the discretion in a situation potentially leading to disciplinary action to issue, or to lay the groundwork for issuance of, a professional fine-tuning document to the officer involved, the record establishes that that document is not necessarily a precursor for discipline but can be either an admonition of a need for corrective action or a commendation. Moreover, the examples of the circumstances under which professional fine-tuning documentation is issued show that there is considerable interaction and consultation with the Command Staff, leading to the conclusion that the issuance of professional fine-tuning documentation is collaborative, rather than solely the product of the Sergeant's initiative. Indeed, the Chief's testimony indicates that the Sergeant is primarily a fact-finder. Thus, Chief Passarelli testified that "[t]hey have the responsibility or discretion to investigate [the incident] and then they, basically, kick that up the chain of command to their supervisor with the investigation completed." Testifying further, the Chief testified that "I think they're just providing the facts of the incident as they have determined based on their interviews with the officer and what they may have heard, seen, or been part of that night."

Since the City has the burden of proof as to its contention that Sergeants have the authority to discipline their subordinates, I find that the City has not met its burden in this regard. However, as discussed below, I do find that professional fine-tuning documentation has an important role to play in the determination as to whether Geneva Sergeants have the authority to direct.

**d. Authority to Direct**

Sergeants, other than the Administrative Sergeant, have the authority to direct employees using independent judgment.

“An employee exercises the authority to direct subordinates where he or she approves overtime and personal holiday requests, reviews subordinates’ reports, assigns subordinates to jobs or teams, and occasionally takes command of the work.” *Service Employees International Union, Local 73 v. Illinois Labor Relations Board*, 2013 IL App (1<sup>st</sup>) 1202799, ¶ 52, citing *City of Freeport*, 135 Ill. 2d at 513. “The independent monitoring of subordinates’ work includes the review of subordinates’ work for clarity, thoroughness and accuracy, as well as the review of the findings and recommendations of the reports.” *Id.*, citing *Department of Central Management Services/ The Department of Public Health v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4<sup>th</sup>) 110013 ¶¶ 61-69. *See also, County of Lake*, 16 PERI ¶ 2036 (IL SLRB 2000); *County of Cook and Sheriff of Cook County (Department of Corrections)*, 15 PERI ¶ 3022 (IL LLRB 1999); *City of Naperville*, 8 PERI ¶ 2016 (IL SLRB 1992). In order to find supervisory status solely on the basis of the authority to direct, however, a putative supervisor must also possess discretionary authority to affect their subordinates’ terms and conditions of employment. *Illinois Department of Central Management Services v. Illinois Labor Relations Board*, 382 Ill.App.3d 208, 224 (4<sup>th</sup> Dist. 2008); *Village of Plainfield*, 29 PERI ¶ 123 (IL LRB-SP 2013).

In this case, the record establishes that Sergeants, other than the Administrative Sergeant, have the authority, in the interest of the City, to direct the work of their subordinates, and that they use independent judgment in doing so. The Sergeants' authority to direct is effectuated in a number of ways, including giving and redirecting job assignments and monitoring of work, including video monitoring. Sergeants consistently review officers' work product, with the authority to "kick back" a police report for correction of grammatical and policy errors. They prepare performance evaluations and authorize overtime, flex time, and time off. The Appellate Court has found that "the 'authority to independently *assign and monitor work*, evaluate employees, and approve time off for ... subordinates 'clearly satisfies the requirement under the Act that a supervisor "direct" his subordinates with independent judgment.'" *Department of Central Management Services/ Department of Transportation v. Illinois Labor Relations Board, State Panel*, 2013 IL App (4<sup>th</sup>) 110825, ¶ 49 (emphasis in original) (quoting *Department of Central Management Services v. Illinois Labor Relations Board, State Panel*, 2011 IL App (4<sup>th</sup>) 090966, ¶ 201).

Patrol Sergeants are authorized to call in off-duty patrol officers when confronted with staffing shortages and can request assistance from neighboring jurisdictions in emergency situations. Patrol Sergeants are authorized to send patrol officers home in emergency situations, such as if an officer were to report to work in an inebriated condition. When calls for police service come in to Tri-Com, the Patrol Sergeant on duty has the authority to redirect the call to another patrol officer or respond to the call himself.

In the Investigations Unit, the Detective Sergeant has the authority to assign cases to detectives and to reassign them if needed. That this authority is exercised with the use of independent judgment is illustrated by the testimony of Commander Frieders, who testified that

Detective Sergeant Dean talked to the Commander about the assignment of an investigations case to a patrol officer and that Sergeant Dean proceeded with the assignment despite the Commander's misgivings.

The record also establishes that Sergeants regularly review and evaluate the work of their subordinates. Review and evaluation functions are performed "in the interests of the employer" when the alleged supervisors 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 (IL LLRB 1999). The record establishes that the review and evaluation functions in this case are performed by the Sergeants, both in the Patrol Unit and in the Investigations Unit, in a manner consistent with the exercise of supervisory authority. Sergeant Dean, for example, testified that he completes his performance evaluations without input from anyone before submitting the evaluations to Commander Frieders for review. While the testimony establishes that there was one instance in which Commander Frieders made substantive edits in the evaluations of two officers, these exceptions do not detract from the overall conclusion that performance reviews are conducted by the Sergeants using independent judgment. *See Department of Central Management Services v. Illinois Labor Relations Board, State Panel*, 2011 IL App 4<sup>th</sup> 090966, ¶ 216 in which the Appellate Court noted that "independent judgment" does not mean that the putative supervisor cannot involve anyone else in the decision-making process.

In aid of the assignment and evaluation functions, both Patrol Sergeants and the Detective Sergeant are authorized to issue professional fine-tuning documentation. Although, as noted above, such a document does not constitute discipline within the meaning of the Act, it can be a precursor to discipline and does provide guidance to officers regarding policy compliance (such

as compliance with the Department's pursuit policy), appropriate conduct when dealing with members of the public, and correction of errors in policing and police report preparation. The authority to issue professional fine-tuning documentation, together with the authority to perform other functions falling under the heading of direction, thus establishes that the Patrol Sergeants and the Detective Sergeant have the necessary authority to affect their subordinates' terms and conditions of employment in a manner consistent with supervisory status.

*e. Authority to Adjust Grievances*

The City has not borne its burden of proof to show that Patrol Sergeants and the Detective Sergeant have the authority to adjust grievances using independent judgment.

While the Patrol Sergeants and Detective Sergeant act in the capacity of the representative of the Employer at the first step of the FOP Contract grievance procedure, the evidence does not support the City's contention that a Sergeant has the authority to use independent judgment to adjust grievances at this step. Although there apparently have not been many grievances filed, such evidence as there is indicates that the Sergeants receive direction from the Command Staff concerning the handling of grievances at the first step.

As noted in the Findings of Fact, one example of grievance-handling that was the subject of testimony by Detective Sergeant Dean involved a detective who filed a grievance regarding the denial by the Sergeant of overtime for an after-hours telephone call. Upon consultation with Commander Frieders, Sergeant Dean was advised to discuss the matter with the detective and, if she persisted with the grievance, to deny the grievance and let the grievance procedure play out. When the detective did not withdraw the grievance, Sergeant Dean denied it, and the detective then did not pursue the grievance beyond the first step.

Although this is but one example, there is no evidence beyond generalized, conclusory statements of City witnesses to show that Sergeants have the authority to adjust grievances using independent judgment as opposed to command directive. The City, therefore, has not borne its burden with respect to the use of independent judgment in the adjustment of grievances.

### **3. Supervisory Indicia and Independent Judgment: the Administrative Sergeant**

*The Administrative Sergeant is not a statutory supervisor..*

As noted above, the duties and responsibilities of the Administrative Sergeant are primarily administrative, rather than operational or supervisory, in nature. In asserting that the Administrative Sergeant is a supervisor, the City focuses on Sergeant Rivera's role with respect to the oversight of the field training program, contending that he makes recommendations as to whether officers should pass the probationary period and that Chief Passarelli accepts his recommendation "the vast majority of the time." The field training program, however, is a training program; successful completion of the program is not a promotion nor does it constitute, in and of itself, an assignment. Thus, "[p]roviding training is not per se a supervisory function," except in those circumstances when a supervisor is choosing between training and discipline.

*American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services, 26 PERI ¶ 116 (IL LRB-SP 2010).*

Because the Administrative Sergeant performs no supervisory functions, he is not a supervisor within the meaning of the Act.

### **4. Additional Factors**

As the Appellate Court pointed out in *City of Sandwich*, Ill.App.3d at 1011, the Act mandates consideration of additional factors in evaluating a claim of supervisory status in cases

involving law enforcement units. While the Act specifies that these factors are not the sole or predominant factors, it also requires that they be considered.

In this case, it is clear that the Police Department's policies treat the Sergeants as supervisors. Other factors, according to the Respondents, are the following:

- 1) Sergeants are paid an average of \$13,000 per year more than patrol officers and detectives.
- 2) Sergeants attend Command Staff meetings and management training classes that their subordinates do not.
- 3) Most importantly among these additional factors, Patrol Sergeants are often the highest ranking officers on duty in the Geneva Police Department. The Police Chief and the Commanders, as well as the Detective Sergeant and the Administrative Sergeant, work normal business hours and are not normally on duty during evenings and on weekends. In this regard, the Supreme Court in *City of Freeport* observed that:

Most significantly, in the late evening and early morning hours there are no personnel with authority higher than the ranking officer on duty. If the ranking officers are not supervisors, the Freeport Police Department operates entirely without supervision a large part of the time. In such circumstances, it is not unreasonable to conclude that even the small amount of supervisory power exercised by the ranking officers makes them representatives of their employer.

135 Ill.2d at 522.

This consideration is ameliorated by the fact that the Department's notification policy requires the two Commanders to alternate on-call weeks, whereby a Commander can be reached even during his off-duty time if the occasion arises. Nevertheless, given the reasonable expectation that a Sergeant is not going to call an otherwise off-duty Commander unless the occasion truly necessitates such a call, the "highest ranking officer on duty" consideration is one that militates in favor of a finding of supervisory status, at least for the Patrol Sergeants.

## **5. Conclusion: Supervisory Status**

City of Geneva Sergeants perform substantially different work from their subordinates. In addition, the Patrol Sergeants and the Detective Sergeant have the authority to direct their subordinates, and they use independent judgment in performing this function. Since “[t]he presence of even one indicium of supervisory authority accompanied by independent judgment is sufficient to support a finding of supervisory status,” *Department of Central Management Services v. Illinois State Labor Relations Board*, 278 Ill. App. 3d 79, 83 (4<sup>th</sup> Dist. 1996), the Patrol Sergeants and the Detective Sergeant are “supervisors” within the meaning of Section 3(r) of the Act. The Administrative Sergeant, however, is not a statutory supervisor.

### **C. The Confidential Exclusion**

#### **1. Confidential Employees Generally**

The term “confidential employee” is defined in Section 3(c) of the Act as follows:

“Confidential employee” means an employee who, in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer’s collective bargaining policies.

Confidential employees are excluded from the definition of “public employee” under Section 3(n) of the Act and are thus excluded from collective bargaining. “The purpose of excluding confidential employees is to keep employees from ‘having their loyalties divided’ between their employer and the bargaining unit which represents them.” *Chief Judge*, 153 Ill. at 523.

The City asserts that the Administrative Sergeant is a “confidential employee” within the meaning of the above definition. As the party seeking to exclude this position from collective bargaining, the City has the burden of proving its contention. *Health and Hospital System of the County of Cook v. Illinois Labor Relations Board, Local Panel*, 2015 IL App (1<sup>st</sup>) 150794

(“*Health and Hospital System*”) ¶ 51; *County of Cook (Provident Hospital) v. Illinois Labor Relations Board, Local Panel*, 369 Ill. App. 112, 123 (1<sup>st</sup> Dist. 2006). And since confidential employees are precluded from collective bargaining rights otherwise guaranteed by the Act, the exclusion must be interpreted narrowly. *Health and Hospital System*, ¶51; *American Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board*, 2014 IL App 1<sup>st</sup> 132455 ¶ 31.

The Act’s definition of “confidential employee” embodies two tests for determining whether the exclusion applies: (1) the labor-nexus test and (2) the authorized access test.<sup>3</sup> Satisfying the elements of either test establishes confidential employee status. *Chief Judge*, 153 Ill.2d at 523. The City contends that the Administrative Sergeant meets both tests for confidential employee status. The Petitioner contends that the Administrative Sergeant does not meet either test and are therefore “public employees” under Section 3(n) of the Act.

## **2. The Labor-Nexus Test**

An employee is considered to be a confidential employee under the labor-nexus test if, the employee “in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in regard to labor relations.” The person(s) assisted by the employee must perform all three functions before a finding of confidential employee status can be made. *Chief Judge*, 153 Ill. 2d at 523.

Under the labor-nexus test, the initial focus is on whether or not the person(s) assisted by the employee in question is one who formulates, determines, and effectuates management policies in regard to labor relations. If that first prong of the labor-nexus test is met, then the

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<sup>3</sup> The Board also has adopted the reasonable expectation test, which applies only when a collective bargaining unit is not in place and employees are expected to assume confidential duties once the bargaining unit is established. *Health and Hospital System*, ¶ 56. This test does not apply to the facts of this case.

next question is whether the employee in question assists and acts in a confidential capacity to the one who formulates, determines, and effectuates management policies in regard to labor relations.

### **3. The Authorized Access Test**

Under the authorized access test, an employee is considered to be a confidential employee, and hence excluded from collective bargaining, if in the regular course of his duties he has authorized access to confidential information concerning matters specifically related to the collective bargaining process. *Chief Judge*, 153 Ill.2d at 523. Satisfaction of this test requires that the access occur in the regular course of his or her duties, that it be authorized, that the information so accessed be confidential, and that the information relate to collective bargaining. *Health & Hospital System*, ¶ 67. Information related to collective bargaining includes information relating to the employer's strategy in dealing with an organizational campaign, information relating to collective bargaining proposals, and information relating to matters dealing with contract administration. *Id.*; *Department of Central Management Services (Department of State Police) v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4<sup>th</sup>) 110356, ¶ 27. Mere access to information contained in personnel files, to information related to general personnel matters, or to statistical information relating to the employer's labor relations policies, however, does not establish confidential status, even if that information is confidential. *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago*, 25 PERI ¶ 2 (IL LRB-LP 2009); *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services*, 25 PERI ¶ 5 (IL LRB-LP 2009). Employees' access to information "which may be used in but is not related to labor relations does not indicate that they are confidential employees." *American*

*Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board, State Panel*, 2014 IL App (1<sup>st</sup>) 132455, quoting *Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31*, 218 Ill.App.3d 682, 702 (1<sup>st</sup> Dist. 1991), *aff'd*, 153 Ill.2d 508 (1992) (“*Chief Judge 1992*”) (emphasis in original).

**D. Analysis: Confidential Employee Status**

*The Administrative Sergeant is a “confidential employee” within the meaning of Section 3(c) of the Act.*

**1. Application of the Labor-Nexus Test**

In contending that the labor-nexus test is met here, the City asserts the person that Sergeant Rivera assists is Chief Passarelli. However, there is no evidence, aside from the Chief’s general testimony to the effect that he provides “oversight for ... all aspects of [police] service delivery...,” that he in fact performs all of the functions required to be shown in order to meet the first prong of the labor-nexus test. In the absence of such evidence, I cannot conclude that the requirements of the first prong have been met.

Because the evidentiary requirements of the first prong have not been met, it is unnecessary to address the second question – whether the employee in question assists, in a confidential capacity and in the regular course of his duties, the person allegedly being assisted. Therefore, I find that the Administrative Sergeant is not a confidential employee under the labor-nexus test.

**2. Application of the Authorized Access Test**

The City bases its claim of confidential employee status under the authorized access test on the contention that the Administrative Sergeant has access in the regular course of his duties

to collective bargaining information developed and used in connection with negotiations with the FOP. Thus, Chief Passarelli testified that Sergeant Rivera “was sent all of the documentation that the City sent as we were reviewing proposals, and he was in each of those e-mails.” The Chief testified that Sergeant Rivera was assigned to participate in the negotiations “because we have always viewed the position that he holds as a stepping stone to the administration of the Department.” Sergeant Rivera, the Chief testified, was next in line to be appointed to a Commander position and, like the Administrative Sergeant before him, was provided with confidential collective bargaining information and attended one preparatory meeting and one mediation session during the bargaining process. In the initial meeting that Sergeant Rivera attended, the Chief testified, “we talked about strategy, what the City’s perspective was going to be moving forward and what our negotiating tactics would be as we moved forward through the process.”

Although Sergeant Rivera’s participation in the actual negotiations process was minimal, in that he attended only one mediation session, and although he testified that he did not recall the information he was provided, the evidence is sufficient to establish his confidential employee status under the authorized access test. The authorized access test does not require that the recipient of confidential information absorb or recall the information provided, but only that he had authorized access to it. In addition, despite Sergeant Rivera’s testimony that the reason for his being assigned to receive collective bargaining information and sit in on preparation sessions and one mediation session was “just me,” thereby inviting the inference that this was an *ad hoc* assignment, the evidence indicates that the Administrative Sergeant’s access to confidential information relating to collective bargaining occurred as a function of his position and was therefore “in the regular course of his ... duties.”

Because the requirements of the authorized access test have been met, I find that the Administrative Sergeant is a confidential employee under Section 3(c) of the Act.

**V. CONCLUSIONS OF LAW**

1. City of Geneva Patrol Sergeants and Detective Sergeant are “supervisors” within the meaning of Section 3(r) of the Act.
2. The City of Geneva Administrative Sergeant is a “confidential employee” within the meaning of Section 3(c) of the Act.

**VI. RECOMMENDED ORDER**

Unless this Recommended Decision and Order is rejected or modified by the Board, the majority interest petition filed by the Petitioner is dismissed.

**VII. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board’s Rules and Regulations, parties may file exceptions to the Administrative Law Judge’s Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge’s Recommended Decision and Order. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at [Helen.J.Kim@Illinois.gov](mailto:Helen.J.Kim@Illinois.gov), or to the Board’s designated e-mail address for electronic filings at [ILRB.Filing@Illinois.gov](mailto:ILRB.Filing@Illinois.gov), in accordance with Section 1200.5 of the Board’s Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. All filings must be served on all other parties.

Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

**Issued in Chicago, Illinois on September 2, 2022.**

*Donald W Anderson*

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Donald W. Anderson  
Administrative Law Judge

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