

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

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| American Federation of State, County, |) | |
| And Municipal Employees, Council 31, |) | |
| |) | |
| Petitioner, |) | |
| |) | Case No. L-RC-18-024 |
| and |) | |
| |) | |
| County of Cook, Health and Hospital System, |) | |
| |) | |
| Employer. |) | |

ORDER

On September 13 2019 Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge’s Recommendation during the time allotted, and at its November 14, 2019 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 14th day of November 2019.

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

/s/ Helen J. Kim _____
Helen J. Kim
General Counsel

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| American Federation of State, County and |) | |
| Municipal Employees, Council 31, |) | |
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| Petitioner/Labor Organization, |) | |
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| and |) | Case No. L-RC-18-024 |
| |) | |
| County of Cook, Health & Hospital System, |) | |
| |) | |
| Employer. |) | |

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On April 9, 2018, the American Federation of State, County and Municipal Employees, Council 31, (AFSCME or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking add the titles Patient Access Quality Management Coordinator and Cashier Division Supervisor II employed at the County of Cook, Health & Hospital System (County or Employer) to the existing, AFSCME-represented Health Facility Unit. The Employer opposed the petition, asserting that the employees sought to be represented are excluded from coverage of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, pursuant to the exemption for supervisory and managerial employees. In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on October 23 and 24, 2018 by ALJ Sharon Purcell. Both parties elected to file post-hearing briefs. The case was subsequently transferred to the undersigned.

I. PRELIMINARY FINDINGS

The parties stipulate and I find:

1. The Employer, County of Cook, Health & Hospital System, is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act.
2. The Employer is subject to the jurisdiction of the Board’s Local Panel pursuant to Section 5(b) of the Act.

3. The American Federation of State, County and Municipal Employees, Council 31 is a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The first set of issues is whether the Patient Access Quality Management Coordinators (“Coordinators”) and Cashier Division Supervisor IIs (“CDS IIs”) are supervisory employees within the meaning of Section 3(r) of the Act. The second set of issues is whether the Coordinators and CDS IIs are managerial employees within the meaning of Section 3(j) of the Act.

The Employer asserts that the Coordinators are supervisors because their principal work is obviously and visibly different from that of their subordinates, they direct, discipline, and effectively recommend the discipline of their subordinates with independent judgment, and they spend a preponderance of their work time engaged in supervisory activities.

The Union asserts that the Coordinators are public employees and that they do not meet the test for supervisory authority. As a threshold matter, the Union argues that the Coordinators do not have any subordinates because the clerks they allegedly oversee in fact report to others. In the alternative, the Union asserts that the principal work of the Coordinators is substantially the same as that of the clerks. It further asserts that the Coordinators do not direct, discipline, or effectively recommend discipline with the requisite independent judgment. The Union concludes that the Coordinators do not spend a preponderance of their work time exercising supervisory authority.

Next, the Employer argues that the CDS IIs are supervisors because their principal work is obviously and visibly different from that of their subordinates, who perform cashier functions. In addition, the Employer asserts that the CDS IIs direct, discipline, and effectively recommend the discipline of their subordinates with the requisite independent judgment. The Employer contends that they also spend a preponderance of their work time engaged in supervisory activities.

The Union counters that the CDS IIs are public employees and that they do not meet the test for supervisory authority. As a threshold matter, the Union argues that the CDS IIs do not have any subordinates because the individuals they allegedly oversee, the cashiers and the Accountant I, in fact report to others. In the alternative, the Union contends that the principal

work of the CDS IIs is substantially the same as that of the cashiers and the Accountant I. The Union also argues that the CDS IIs do not direct, discipline, or effectively recommend discipline with the requisite independent judgment. The Union concludes that the CDS IIs do not spend a preponderance of their work time exercising supervisory authority.

Next, the Employer asserts that the Coordinators are likewise managerial because they are responsible for ensuring that the department operates efficiently and effectively. In addition, the Employer argues that they effectuate the Employer's policies by raising employee deficiencies to the attention of the site manager and making effective recommendations on disciplinary matters, attendance, and training. The Employer similarly argues that the CDS IIs are managerial because they are responsible for ensuring that the cashier division is operating effectively and is properly staffed. If further asserts that the CDS IIs are responsible for effectuating the Employer's policies and procedures by ensuring that their subordinates comply with them.

The Union denies that the Coordinators and CDS IIs are managerial. It reasons that the record is devoid of evidence to support a finding of managerial authority. It further notes that the employees' testimony as to their actual job duties should be given more weight than the conclusory terms of the employees' job descriptions.

III. FACTS

1. Patient Access Quality Management Coordinators

The Patient Access Department operates 24-hours a day and handles in-patient and out-patient admissions to the hospital, out-patient registration, and bed control. Annie Peterson is the Director of Revenue Cycle and heads the Department. Peterson oversees the Patient Access Site Manager IIs ("managers"), Ellen Greene and Beronica Woodson. Greene is a manager at Stroger Hospital, and Woodson is a manager at Provident Hospital. The managers oversee the Patient Access Quality Management Coordinators ("Coordinators"). At the time of hearing, there were two Coordinators, Yemisi Taylor and LaTrice Jones.¹

Each Coordinator oversees a number of clerk Vs ("clerks"), who are represented by AFSCME. The clerks also report to the Patient Access Site Managers. The clerks' job

¹ There are four vacant coordinator positions.

description states that clerks report to the System Director of Patient Access, but it is not clear who holds this title.

The clerks collect and analyze all required patient demographics, insurance, and financial data to admit, register, and preadmit patients. The clerks also confirm medical appointments.

Coordinator Taylor works at Stroger and reports to Manager Greene. She works from 8 am to 4 pm, Monday through Friday. She oversees a total of eight clerks. Two of the clerks work from 6 am to 2 pm, one works from 7 am to 3 pm, some other clerks work from 8 am to 4 pm, and one works from 9 am to 5 pm.

Coordinator Jones works at Provident and reports to Manager Woodson. Jones works from 3 pm to 11 pm, Monday through Friday and every other weekend, whereas Woodson works the morning shift. Jones is responsible for the operations of the Department when she is on duty. She oversees a total of six clerks. Four of the clerks work on Jones's shift, from 3 pm to 11 pm, and two clerks work on a different shift, from 11 pm to 7 am. These numbers represent minimum staffing levels.

The clerks at Provident who report to Jones work in the emergency room and centralized registration. They report to Jones with respect to their daily duties. Jones covers for the clerks on their hour-long lunch break three or four times a week.² About three days a week, she spends approximately four hours a day performing patient registrations. Woodson testified that the Coordinators only perform the registration duties of the clerks in cases of emergency, for example, when the majority of the staff has called off work. However, from September 2017 to February 2018, Jones worked in centralized registration every Saturday for the whole workday as part of her regular assignment.

The Coordinators perform audit and quality-monitoring functions. They complete productivity reports for the clerks and investigate registration errors. The Coordinators also perform registration duties when the Department is short-staffed or if an employee is having trouble accurately inputting the information. The Coordinators then input the data themselves, so the patient is not kept waiting. Coordinator Jones prepares reports on the daily queues, which are the number of patients on the schedule and the number of individuals who do not show up for an appointment. She obtains the information from the access management computer system.

² Jones covers lunch registrations with approximately the same frequency as Woodson does.

Jones also spends time each day confirming appointments and rescheduling individuals who have not shown up for their appointments.³

The clerks do not investigate registration errors and do not monitor the productivity of the other clerks. The clerks do not perform daily queues.

a. Direction

i. Oversight/monitoring

The Coordinators are responsible for performing regular observations of their work areas. Every month the coordinators complete an observation form for each clerk, which includes a number of questions with yes/no answers. There is also a space for comments. For example, the form asks whether the clerk has checked that a patient's phone number is accurate, whether she has appropriately informed the patient where to go next in the clinic, whether she has asked the patient for their emergency contact, and whether she has asked a patient who lacks insurance for documentation that would allow a financial counselor to submit an application for Medicaid or another insurance. If a question asks whether the clerk has performed a number of tasks and the clerk has not performed all of them, the Coordinator must check the "no" box. The Coordinator can explain in the comments, which items within that group of tasks the clerk completed and which items the clerk did not complete. If there is a computer system error that prevents the clerk from asking the required questions, the Coordinator notes that on the form. The Coordinators complete the observation forms to ensure that their staff is staying on task and following the workflow. If a clerk skips over one of the required tasks, the hospital does not receive reimbursement. The Coordinators provide the reports to the Managers, who review them.

Coordinator Jones performs three to four rounds throughout the day. They take approximately 15 to 30 minutes. She goes to each area—admitting, bed control, centralized registration, and emergency room registration—to ensure that the staff are present. She checks to see if they need supplies. She talks to staff in each area to ensure that they are ok. During rounds, she ensures that the work flows by helping register patients. In addition, if the clerks are

³ Jones initially testified that she spends three hours a day performing this function. However, she first received this assignment when a clerk was on medical leave. That clerk has returned, and it is therefore unlikely that Jones consistently spends three hours a day confirming appointments.

having difficulty admitting a patient to Provident because the individual was just discharged from Stroger, Jones makes calls to Stroger and tries to calm the situation down.

Coordinator Taylor does not perform rounds because the clerks she oversees all work in one room.

Coordinator Jones monitors her clerks' attendance, but Coordinator Taylor has no such responsibilities.⁴ In May 2018, after the Union filed its petition, Woodson instructed Jones to track employees' tardies, FMLA leaves, call-offs, patterns, no-swipes, and attendance-related discipline. She told Jones to make a list of when employees were tardy, the excuses they provided, and a list of the discipline that each employee had received for attendance in the past. In addition, Woodson informed Jones that she should identify a pattern of call-offs if employees called off either the day before or the day after they had a scheduled day off. Accordingly, Jones created a document that tracks excessive clocking in/out before or after the grace period, which is six minutes before the beginning or the end of a shift. She obtained the information from the timekeeping system. Jones also created a chart that listed the employee, the call-off date, and their scheduled day off. Jones maintains these documents and emails them to Woodson every two weeks. The purpose of attendance tracking is to ensure that the clerks are in compliance with the Employer's attendance policy.

The Coordinators help the clerks with problems they encounter on the job and answer questions they may have on insurance issues or computer/printer issues. For example, when clerks have questions about whether they performed a registration correctly or correctly updated the insurance, Taylor reviews the work and explains whether it is correct. If it is not correct, she explains the appropriate way to do the work.

The Coordinators at Stroger hold weekly staff meetings with the clerks who report to them. Greene provides all the Coordinators with instructions on information they must convey to their staff. The Coordinators base the content of the meetings on the instructions they receive beforehand from Manager Greene. After the meeting, they report back to Greene.

Manager Woodson has held staff meetings with the clerks on Jones's shift without Jones being present. Jones relieved the clerks who were meeting with Woodson.

⁴ Business Office Supervisor Penny Samuels and Manager Greene perform that task instead.

Employees must swipe in daily with an ID and a finger. The Coordinator must ensure that all employees swipe in. If the employees do not swipe in, the Coordinators ask them to provide a no-swipe form, documenting the time they arrived at work.

ii. Review

The Coordinators perform weekly quality reports to determine whether the clerks have met the Department's performance metrics. The clerks must register a set number of individuals a day with 90% accuracy.⁵ The Coordinator reviews ten randomly-selected applications to determine whether the clerk has scanned the patient's ID, insurance, consent forms, HIPAA forms, and demographic information. The demographics category includes the patient's address and telephone number, insurance type, and emergency contact. The Coordinator also checks whether the patient identification typed into the system matches the document scanned into the system by the clerk. Likewise, the Coordinator ensures that the clerk has submitted the patient's insurance information correctly. If a clerk fails to scan one of the documents applicable to one of the ten applications, the clerk is deemed to have a 90% accuracy rating. If a clerk makes a registration mistake in more than one of the 10 applications, a clerk is deemed to have an accuracy rating of less than 90%. If a clerk's accuracy percentage is 90% or higher, the Coordinator notes that the clerk has met the Department's standards.⁶

The Coordinators do not create the metrics and do not have discretion to change how they score the accuracy rating. Coordinator Taylor uses her prior experience as a financial counselor at the hospital to determine whether a clerk has submitted the insurance information correctly. Greene expects the Coordinators to use their experience with registration in reviewing the work of the clerks.

As discussed more fully below, the Coordinators perform in-service training when clerks make registration errors.

The Coordinators also complete weekly performance standards reports for the clerks they oversee. They provide these reports to the managers. The reports contain the total number of registrations performed by each clerk, the daily average for each clerk, and the registration

⁵ The clerks are only able to perform approximate 20-25 patient registrations a day because of low patient volume.

⁶ Jones completes quality reports for 16 employees. These include all the clerks, not just the ones who report to her.

accuracy percentage number. To prepare the reports, the Coordinators enter the patient access system and obtain the number of registrations performed by each clerk. The daily average is calculated automatically by a formula contained in the system/spreadsheet. The Coordinator calculates the accuracy score based on metrics established by the Employer and the number of mistakes a clerk has made in the randomly-selected-group of ten applications, drawn from the quality reports.

The Coordinators also review productivity reports created by the clerks. The productivity reports completed by the clerks state the number of registrations and special assignments they have completed. The Coordinators ensure that the clerks have tallied the numbers correctly. Coordinators submit the clerks' reports to the manager.

Jones testified that she spends two or three hours a week compiling the performance standards reports. Taylor spends 10 hours a week performing quality assurance reports.

iii. Evaluations

Coordinator Taylor does not complete performance evaluations for the clerks who report to her.

Coordinator Jones does complete performance evaluations for the clerks who report to her. Jones has performed one cycle of evaluations for a total of five subordinates.⁷ She rates them on performance factors such as effectiveness, prompt completion of work, thoroughness, initiative, attendance, timeliness, professionalism, and customer service. She also rates them on knowledge, skills, and abilities, including technical skills, communication skills, judgment, analytical ability, ability to organize, flexibility and adaptability, and ability to work with others. In each category, Coordinator Jones rates the clerk as outstanding, very good, satisfactory, or unsatisfactory. She also assesses the clerk's key competencies and rates them as "meets standards" or "needs improvement." After Jones prepares evaluations for the clerks, she meets with Woodson to discuss each employee and the employee's rating. Woodson reviews Jones's

⁷ The preponderance of the evidence demonstrates that Jones has completed only one cycle of evaluations, although the evidence on this issue is equivocal. Woodson acknowledged that Jones may not have performed evaluations before 2018. Tr. 141. Jones herself gave conflicting testimony on whether she had completed evaluations before 2018. Tr. 230 and 324. However, the documentary evidence includes only the five evaluations completed by Jones in 2018. Had Jones completed evaluations for her subordinates in prior years, the Employer likely would have provided them because the Employer's presentation of documentary evidence in this case was thorough.

performance evaluation to ensure that she is being fair to everyone and not biased. Woodson reviews all the documentation underlying the evaluations before finalizing them. She also considers her own direct observations of the employees in question.

Woodson has modified Jones's evaluations in at least two cases. Woodson initially denied that she had changed any of the ratings contained in Jones's evaluations, but later conceded that she told Jones to change two overall ratings. Jones further indicated that Woodson made a change to a third evaluation without changing the final rating. In one case, Woodson reduced Jones's rating of an employee from "outstanding" to "very good" because she believed that the employees' performance was comparable to the performance of another employee whom Jones had rated as "very good." In changing the rating, Woodson considered the work performance spreadsheets that Jones had provided her. Woodson further noted that she based the modification on having "actually witness[ed]" the two employees. Jones met with each clerk to discuss the evaluation. Woodson was not present during these meetings. The evaluations do not have an impact on the clerks' terms and conditions of employment.

Manager Woodson testified that the Coordinators spend approximately five to six hours a day of a seven-hour workday⁸ reviewing the work of the clerks, monitoring them, and evaluating their performance. Manager Greene similarly testified that the coordinators spend a majority of their work time reviewing and monitoring the work of their subordinates.

iv. Scheduling and Time Off

The Department hires clerks for set hours of work and days off. The Coordinators do not schedule those hours or days off. When Jones switched a clerk's days off to accommodate her schooling, Woodson informed Jones that she did not have authority to change the days on which the clerks worked, and she issued Jones a counseling. Although Woodson claimed that Jones has the authority to make adjustments to employees' schedules, provided that she gives them two-weeks advance notice, Woodson's directive to the contrary undermines this claim.

The two Coordinators have different obligations with respect to approval of leave requests. Coordinator Taylor has no role in approving sick leave or vacations for the clerks. By contrast, Coordinator Jones approves the clerks' requests for time off. She grants every request for time off provided that the employee has the available accrued time and no other clerk on that

⁸ The seven hours does not include lunch.

shift has requested time off. Jones denies the request for time off if she has already granted a leave request for one employee on the shift because only one clerk per shift is permitted to be on leave. Jones likewise denies the request if the employee has no accrued leave time. Jones talks with Woodson before approving time-off requests. Woodson tells Jones whether she should approve the requests. Woodson has instructed Jones to discuss every request for time off with her.

The two Coordinators have different obligations with respect to establishing a weekly schedule. Coordinator Taylor establishes a weekly schedule that sets employees' work location assignments, their lunchtime, and any scheduled overtime. Taylor makes work location assignments based on a regular rotation. If a clerk calls off work, Coordinator Taylor is responsible for rotating the clerks to ensure that there is coverage. Greene has informed Taylor that she must schedule lunches for the earlier shifts between 7 am and 12 pm, and that she should schedule the lunches on the late shift between 12 pm and 4 pm. Manager Greene seldom makes changes to Taylor's schedule. However, Manager Greene has assigned clerks to different areas on occasion. She emails Taylor and tells her to send a particular clerk a different area such as same-day surgery or occupational therapy.

By contrast, Coordinator Jones does not establish a weekly schedule. Rather, Woodson sets the schedule based on the leave requests that Jones has granted.⁹ That schedule also specifies the clerks' assignments. However, the clerks' assignments at Provident are standard and do not change. If an employee in centralized registration has called off, but there is sufficient overall staffing, Jones will assign a clerk from another area, such as the emergency room, to staff centralized registration. If there are two employees assigned to the emergency room, she will choose the employee who is trained to perform centralized registration. If no employees are trained to perform that work, Jones will perform it herself.

If a shift is short an employee, the Coordinators must seek volunteers for overtime. If there are no volunteers, the Coordinators perform the work themselves. A Coordinator does not have authority to require another employee to come in to work unless the manager has instructed the Coordinator that she may do so. When there is insufficient coverage, Jones informs Woodson and Woodson decides whether to call someone in on overtime. Woodson has never

⁹ Woodson characterized this as a recommendation on the schedule.

told Jones that she has authority to call someone in to work overtime. In this manner, Coordinators are responsible for ensuring that the areas of the Department are covered.

b. Correction, Training, and Discipline

The Coordinators provide in-service education to clerks as a group when the Department upgrades its computer system or its procedures and protocols. For example, the Coordinators have provided group training on how to use work stations on wheels in a manner that preserves patient confidentiality. They have also provided group training on Department protocols regarding the accuracy of information inputted into the system, appropriate use of downtime, the prohibition against food at the cubicles, and how to complete presumptive eligibility forms. Manager Greene testified that the Coordinators make recommendations on the topics of training, based on their observations of staff, and that the topics for such group trainings sometimes originate with the Coordinators. However, Manager Greene did not specify which of the group trainings documented in the record were the result of a Coordinator's recommendation for training. Manager Greene further testified that she determines whether there are problems with the clerks' performance that require group training by reviewing a compilation report of the Coordinators' quality reports, prepared by the Business Office Supervisor. She then directs the training department or the Coordinators to provide that group training.

The Coordinators perform in-service training when clerks make registration errors and when they receive notice of a patient complaint. The managers receive notice of potential registration errors when they receive claims denials reports from Mabrey Simpson, the System Director in the Training Department, and when they review the Coordinators' quality assurance reports. The Coordinators are responsible for reporting instances in which they believe a subordinate has violated the Employer's rules, but the managers may also receive notice of patient complaints from the Patient Relations Department.

The managers direct the Coordinators to investigate these issues and to report their findings. In cases involving registration errors resulting in claims denials, the managers provide Coordinators with of list of claims denials. They direct them to investigate the denials to determine why they occurred and to report back the reason for the error. The Coordinators provide the managers with a printout from the system identifying whether the clerk made an error in the registration and explaining any reasons for the error. The managers perform a

transaction audit to ensure that the identified clerk was in fact the individual who submitted the incorrect information, and they also review the attached documentation. If the manager agrees that the identified clerk made the error in question, the Coordinator reviews the error with the clerk, asks them to correct the error, and reviews the work when it is complete to ensure that the clerk has done it correctly. Greene testified that she rarely disagrees with the Coordinator's assessment that a clerk made a mistake.

For example, in one case, Coordinator Taylor observed that the clerk registered a patient as having coverage under a Cigna Health Spring Medicare plan, whereas the system that the Employer uses to verify insurance (E-care) showed that the patient had coverage under a different Medicare plan, Medicare Advantage. Accordingly, the Coordinator determined that the clerk should have registered the patient as "self-pay noncontracted" because the Employer was "not contracted with [the patient's] insurance plan."

The process of investigating and training is similar for other performance-related issues such as those that lead to patient complaints. In one case, Coordinator Taylor performed an informal training on customer service for a clerk before informing Manager Greene of the incident, but she did not issue the clerk an in-service training form until after she brought the matter to Greene's attention. She spoke with Greene about the matter, and Greene directed her to issue the clerk an in-service training form. After this incident, Greene mandated customer service training for all the clerks.

When the Coordinators train their subordinates, they issue their subordinates records of staff training ("in-service forms") to document this training. The Coordinators place the in-service forms into the clerks' personnel files. If a clerk accumulates a number of in-service forms and does not improve her performance, the Employer will issue the clerk a disciplinary counseling.

The Coordinators also draft and sign disciplinary action forms that their Managers review, approve, and countersign. Such forms relate to performance issues, attendance, and misconduct. A manager will not approve a disciplinary action form unless the clerk in question has already received three to five in-service forms relating to the same issue. When a clerk receives a disciplinary action form, the Employer places a copy into the clerk's personnel file. Discipline is progressive.

The witnesses offer conflicting descriptions of how the Coordinators decide to draft in-service forms and disciplinary action forms. Taylor and Jones testified that they describe the facts of the incident/error to their managers, without providing any recommendation, and that their managers direct them to draft either an in-service form or a disciplinary action form. By contrast, Managers Greene and Woodson both testified that the Coordinators provide them with recommendations on whether a clerk should receive an in-service form or a disciplinary action form. And they both testified that they regularly accept the Coordinators' recommendations on these matters.

The preponderance of the evidence demonstrates that the managers determine whether the Coordinators should issue a clerk an in-service form or a disciplinary action form for clerk errors. Coordinator Taylor testified that in the month prior to hearing, Manager Greene identified three mistakes by clerks that required disciplinary action. This is consistent with Jones's assertion that Manager Woodson identifies which of Jones's subordinates should be subject to disciplinary actions. Taylor further stated that Manager Greene instructed her to complete disciplinary action forms for those clerks and to send her the completed form along with supporting documentation. Although Manager Greene stated that she expects the Coordinators to make recommendations as to whether training or discipline is needed when an employee fails in their performance, she conceded that she instructed Coordinator Taylor to send her a recommendation for discipline whenever a clerk has failed to meet the 90% accuracy performance metric requirement. Manager Woodson's testimony is consistent with the approach outlined by Manager Greene because Woodson asserted that she discusses the disciplinary issue with Jones before Jones submits a disciplinary action form. Furthermore, in cases involving clerk errors that result in claims denials, Greene demonstrated that she determines the point at which training is inadequate and discipline must issue against a clerk to address a performance deficiency. Greene emailed the coordinators in April 2018 after receiving a claims denial report and stated, "this must be cleaned up, discipline will start to occur for failure to follow through on coordinating insurance benefits in the system." Moreover, Greene's testimony strongly indicates that she directed the threat of discipline at the clerks and not the Coordinators because she indicated that the individuals who "failed to follow through on coordinating insurance benefits" were the "eight people" who were the Coordinators' subordinates.¹⁰

¹⁰ Q: Why did you forward [the email] to the [Coordinators]?

Manager Greene identified a case involving a rude clerk in which she claimed that Taylor recommended the issuance of an in-service form instead of disciplinary action. However, Taylor denied that she made any recommendation when she provided Greene with her summary of the event and a description of the training she had provided. She further asserted that Greene did not ask her for one. There is no written evidence of such a recommendation to issue an in-service form, and Taylor's summary contains none. Notably, none of the other incident summaries presented into evidence contain recommendations either, which further supports Taylor's assertion that she made no recommendation. Manager Greene testified that "it was determined that it was not a write-up but that the [clerk] needed more education on how to handle patients," but the preponderance of the evidence demonstrates that this was not Taylor's determination. Rather, Greene directed Taylor to document the in-service training and to include the description of the incident provided to her by the Patient Relations Department. Moreover, as discussed above, the preponderance of the evidence demonstrates that Manager Greene did not base her determination on any express recommendation from Taylor. Manager Greene's involvement in creating the summary attached to the in-service form weighs against finding that Taylor independently recommended that the clerk receive a documented in-service in lieu of disciplinary action.

The preponderance of the evidence likewise demonstrates that the managers determine how a Coordinator should handle attendance related infractions and that the Coordinators make no recommendations on such matters. Only Jones has attendance-related obligations. Furthermore, the record on the whole supports Jones's claim that Woodson provides Jones with a list of employees who should receive discipline for attendance violations and that she instructs Jones to prepare disciplinary action forms according to her specifications. Woodson requires Jones to track employees' attendance including tardies, FMLA leaves, call-offs, patterns, and attendance-related discipline. Woodson has directed Jones to identify patterns of lateness when an employee calls off the day before or the day after they have a scheduled day off. In accordance with these directives, Jones places the information into charts that she emails to Woodson every two weeks. The raw material that Jones compiles and sends to Woodson facilitates a unilateral disciplinary determination by Woodson. This approach is consistent with

A: Because they are the two managers in charge of the eight people that failed to follow through on putting the insurance incorrectly where we had denials.
See Tr. p. 29.

Woodson's insistence that Jones consult her on even routine matters, such as the clerk's requests for time off. Woodson conceded that she discusses the issue of attendance-related discipline with Jones before Jones completes the disciplinary action form, which further supports a finding that the impetus to impose discipline originates with Woodson. Accordingly, there is less support in the record for Woodson's claim that Jones identifies violations of the attendance policy and makes recommendations for discipline that Woodson, in turn, always accepts.

The witnesses also provided conflicting testimony on whether the Coordinators make a recommendation on the level of discipline that a clerk should receive in a disciplinary action form. It is undisputed that some Coordinators do make such recommendations. Manager Greene testified that Taylor identifies the level of recommended discipline in a disciplinary action form as either a counseling or a verbal reprimand. Manager Greene further stated that Taylor provides documentary evidence regarding the employees' errors. The documentation includes a written summary and printouts from the system showing the clerk's mistake. Taylor also includes the in-service training forms that document the training that she has provided the clerk in the past. Taylor did not deny that she had done so.

However, the evidence also demonstrates that Coordinator Jones does not make recommendations on the level of discipline set forth in a disciplinary action form and that Woodson tells her the level of discipline that is appropriate in each case. Although Woodson testified that Jones identifies the level of recommended discipline as a counseling or a verbal reprimand, she also asserted that she and Jones discuss the matter before Jones drafts the disciplinary action form and submits it for Woodson's review. Furthermore, Woodson's claim that she accepts all disciplinary recommendations offered by Jones is outweighed by Jones's specific reference to an instance in which Woodson rejected Jones's suggestion that discipline should not issue against an employee for an attendance infraction. In that case, Jones requested that Woodson not issue discipline against an employee who was one minute late. Jones informed Woodson that the individual was a good employee who always volunteered to do work and was never very late, but Woodson nevertheless imposed discipline.

Whether an individual receives counseling, a verbal reprimand or a suspension, depends on how many times the clerk has made the same error. A disciplinary counseling is warranted if a Coordinator has already provided in-service training three to five times. A Coordinator cannot recommend a counseling unless she has documented in-service training on several previous

occasions. If a clerk has previously received a counseling, the Coordinator must recommend that the clerk receive a verbal reprimand. The manager will not accept a Coordinator's recommended level of discipline if the Coordinator recommends a counseling, and the clerk at issue has already received a counseling for that type of infraction.

Manager Greene has issued discipline to employees based on performance issues that Taylor brings to her attention. Greene met with the affected employees without Taylor being present. Greene did not inform Taylor of whether she had imposed discipline in those cases.

Manager Woodson has issued disciplinary action forms that Jones had signed. In those cases, Woodson conducted the pre-disciplinary meeting with the affected employees, although Jones was also present. Woodson testified that she conducted the meetings because Jones was still learning. However, the frequency with which Woodson conducted pre-disciplinary meetings for Jones's subordinates (five times) is more indicative of her intent to control the process than to teach Jones how to perform the task independently.

Woodson has disciplined clerks who report to Jones without any involvement by Jones. In one case, Woodson suspended a clerk who reports to Jones without informing Jones about the matter. Jones learned of the incident from the clerk who received the suspension.

Jones and former Coordinator Geanene Balantine participated in a disciplinary process that resulted in a clerk's suspension by submitting witness statements at Woodson's request. Jones made no disciplinary recommendation on this matter, and Woodson did not ask her for one. Woodson testified that Balantine recommended that the employee receive a suspension, but the preponderance of the evidence does not support this claim. Jones asserted that Balantine did not make any recommendation for discipline at the disciplinary hearing. Instead, Woodson made the recommendation to the hearing officer. There is also no documentary evidence that Balantine made a recommendation on this issue any earlier in the disciplinary process. Although the record contains other cases in which Balantine signed her name to disciplinary action forms, Balantine signed no disciplinary action form in this instance.

2. Cashier Division Supervisor IIs

The Cashier Division supports the operation of the pharmacy, collects third-party reimbursement payments, and processes patient payments for various insurance companies. Kelly Thomas is the Director of Financial Control II for the Cashier Division. Denise Brown is a

Business Manager III within the Division and reports to Director Thomas. Manager Brown works primarily at Stroger Hospital but also oversees the employees at Provident and Oak Forest. The Stroger location is open from 7 am to 9 pm, the Oak Forest location is open from 8 am to 8 pm, and the Provident location is open from 9 am to 5 pm Monday through Saturday, except on Thursdays when it is open until 7 pm.

Manager Brown oversees employees in the following titles: Cashier Supervisor II (“CDS IIs”), Cashier III, and Accountant I. The Cashier III and the Accountant I titles are both responsible for collecting pharmacy payments in the various pharmacies throughout the hospital system and are collectively referred to herein as "cashiers." There are three CDS IIs, Karl Robinson, Maisha Jones, and Debra Thomas. They oversee the cashiers and also perform cashier work.

Thomas and Maisha Jones work at Stroger. They alternate their schedules. One of them works from 8 am to 4 pm while the other works from 11 am to 7 pm, and they switch schedules weekly. There are three cashiers at Stroger. Two of them work from 7 am to 3 pm and one works from 1 pm to 9 pm. There are two pharmacies at Stroger, and there is also a main cashier window. The Division is deemed fully staffed with cashiers if there is one cashier at each pharmacy. In such cases, CDS IIs Thomas and Jones work at the main cashier window. If one cashier is off work, Thomas and Jones work at the pharmacy cashier window. If two cashiers are off work, one pharmacy is closed, and Thomas and Jones work at the other pharmacy cashier windows.

Robinson works at Oak Forest and reports to both Business Manager Brown and Director Thomas. His hours are 12 pm to 8 pm, Monday through Friday. There is one cashier at Oak Forest. She works from 8 am to 4 pm Monday through Friday, with rotating holidays and weekends. Robinson is responsible for filling in for a cashier on the weekend one Saturday a month if a cashier has called off. Robinson has filled in for a cashier on a Saturday on only one occasion. Robinson is responsible for the operation of the cashier department when Brown and Thomas are not present. Director Thomas comes to Oak Forest once or twice a week.

There is no CDS II at Provident. A contractor performs the duties of the CDS II position instead. There are two cashiers at Provident. They work from 9 am to 5 pm, with rotating holidays and weekends.

The CDS IIs verify that the cashier's register contains the accurate amount of money at the end of the day, they approve that deposit, and they put the money away for the evening. They complete a consolidated deposit report at the end of the shift to ensure that the money collected throughout the day matches the amount that should have been received. The deposit report compiles all the receivables from the prior day's business, using information retrieved from the computer system. The CDS IIs email the reports to their supervisor, who reviews the reports, and provides it to the Finance Department. The Finance Department compiles the documents into a monthly report, which it provides to the comptroller. The CDS IIs count the petty cash and complete the petty cash report daily. The petty cash reports reconcile the amount of petty cash at the beginning of the day with the amount of petty cash at the end of the day.

The CDS IIs make "recommendations for change orders." To that end, they ask the Business Manager III for change if the cashiers are running low on certain denominations (e.g., singles, fives, coins) and they will specify the type and quantity of currency they need. This allows the cashiers to provide change for people who are paying cash at the pharmacy.

The CDS IIs reconcile the shuttle bus log. They ensure that the receipts from the shuttle bus ticket sales match the number of tickets sold by the Division and that the Division has receipts to match each ticket's serial number.

The CDS IIs also process insurance payments for third-party vendors and perform cashier work. When the CDS IIs perform cashier work, they are responsible for balancing their batch of collections at the end of the day.

The cashiers do not complete daily deposit reports or petty cash reports, they do not make recommendations for change orders, and they do not deposit any checks.

1. Oversight and Review

As noted above, the CDS IIs verify that the cashier's register contains the accurate amount of money at the end of the day. They approve that deposit and they put the money away for the evening. They complete a consolidated deposit report at the end of the shift to ensure that the money collected throughout the day matches the amount that should have been collected. They count the petty cash and complete the petty cash report daily, which reconciles the amount of petty cash at the beginning of the day with the amount of petty cash at the end of the day.

Manager Brown testified that the CDS IIs monitor their subordinates, ensure that they are present and working, and ensure that they have enough change to operate in the pharmacy. However, Robinson testified that the only way he oversees the cashier's work on a day-to-day basis is by balancing and approving her batches at the end of the day. Robinson testified that when the cashier is in the cashier booth, he does not watch her perform her duties. He further asserted that no member of management had ever informed him he was required to do so. The cashier at Robinson's location has many years of experience, and Robinson testified that if he were to oversee a cashier with less experience, he might have some responsibilities to observe and train her.

The CDS IIs answer the cashiers' questions about transactions. If there is a problem with the software, the CDS IIs help them resolve such issues. Robinson confirmed that when a cashier informs him that the system is down, he tries to fix it.

2. Other Indicia of Direction

The CDS IIs do not evaluate the cashiers, they do not approve their requests for time off, and they do not schedule them. The cashiers' hours and shifts are set when the Employer hires them. Business Manager Brown testified that she prepares the monthly schedules, handles changes to the cashiers' rotating weekends, and approves requests for time-off. Manager Brown testified that the cashiers' work locations do not usually change and that she is the individual who assigns the cashiers to the different locations. Although Manager Brown testified that a CDS II at Stroger has authority to rearrange assignments if an employee calls off, there is no indication that this has ever occurred. Manager Brown discussed the procedure for call-offs and noted that she determines whether another cashier can perform overtime. If no employee is available, the employees who are present will try and cover for the absent individual, and if necessary, Brown herself will perform the work. Robinson testified that he cannot call employees back into work if a cashier is absent.

3. Discipline

CDS II Maisha Jones has completed and signed one disciplinary action form. In that case, Patient Relations contacted Jones about an incident in which one of the cashiers was rude to a patient. Jones brought the matter to Manager Brown's attention. Manager Brown instructed

Jones to draft a disciplinary action form and to list all the rules and policies that the employee had violated. Brown reviewed the form with Jones to ensure that it was accurate. Manager Brown asserted that Jones determined the level of discipline based on whether the file contained any similar discipline. Brown and Jones were both present at the subsequent disciplinary meeting with the employee.

CDS II Thomas has completed and signed two disciplinary action forms, both of which issued on the same day and pertained to the same employee's attendance. Manager Brown printed out the time reports for Thomas and instructed her to draft a disciplinary action form. She told Thomas to review the employee's personnel file and to determine the level of discipline based on his record. Brown said that she would review the form for accuracy.

Robinson has not issued any discipline and has not recommended the issuance of discipline. He has not completed any disciplinary action forms. If Robinson believed that a cashier had violated some policy he would report the issue to his supervisor, Manager Brown, because Robinson believes that the cashiers report to her.

Manager Brown testified that she generally accepts the CDS IIs' disciplinary recommendations.

4. Time

The preponderance of the evidence demonstrates that the CDS IIs at Stroger spend at least three full days a week performing cashier duties at the pharmacy window. To illustrate, Manager Brown specified that she spends three days a week working at the main cashier window and that, in such cases, the CDS IIs work in the pharmacy cashier window because staffing is low. Indeed, Manager Brown testified that the Division is "severely short-staffed." Manager Brown likewise testified that when she is not performing cashier duties at the main window, the CDS IIs perform cashier duties at the main window. Although Manager Brown did not expressly explain when the Stroger CDS IIs complete their reports, based on Robinson's testimony discussed below, it is reasonable to infer that they spend approximately one to two hours completing such reports, while stationed at the cashier windows. Brown's claim, that the CDS IIs spend approximately 60% of their time reviewing the work of the cashiers and monitoring them, is inconsistent with her testimony that the Division is severely short-staffed and that the CDS IIs perform cashier work in the pharmacy three days a week. Notably, Brown's time

estimate was not supported by a time study, and it could not have been based on personal observation since she herself spends three days a week performing cashier duties at the main window, and the remaining work time completing reports. Moreover, it is unlikely that the CDS IIs at Stroger spend 60% of their work time reviewing and monitoring the work of just two subordinates, where the low staffing of the Division so frequently requires them to perform cashier work.

The preponderance of the evidence demonstrates that the CDS II at Oak Forest, Robinson, works at the cashier booth for five and a half hours each day. He relieves the cashier for lunch between 12 pm to 1 pm, works in his office from 1 pm to 2:30 pm, takes a lunch and then works in the cashier booth from 3:30 to 8 pm. He handles approximately five to six customers an hour during that afternoon window. He may also work on his reports while manning the booth if there is time between customers. Robinson spends one and a half hours a day completing his reports. While Robinson is working at the cashier booth, he remains in that location, even when there are no patients or transactions.

IV. DISCUSSION AND ANALYSIS

1. Supervisory Exclusion

The Patient Access Quality Management Coordinators and Cashier Division Supervisor IIs are not supervisors within the meaning of Section 3(r) of the Act.

Section 2 of the Act grants public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours, and other conditions of employment. 5 ILCS 315/2. Section 3(n) of the Act defines the term public employee and excludes “supervisors [from that definition] except as provided in [the] Act.” 5 ILCS 315/3(n). City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 512 (1990).

The first paragraph of Section 3(r) defines the term supervisor and sets forth a four-part test for establishing supervisory status in non-peace officer employment. Under that test, individuals are supervisors if they (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, (3) consistently use independent

judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. City of Freeport, 135 Ill. 2d at 512.

In a representation case, the party that seeks to exclude an individual or job classification from a proposed bargaining unit via a statutory exclusion has the burden of proving that exclusion by a preponderance of the evidence. Village of Homewood, 25 PERI ¶137 (IL LRB-SP 2009); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002). It “cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee’s job function.” Cnty. of Cook, 28 PERI ¶ 85 (IL LRB-LP 2011).

1) Patient Access Quality Management Coordinators

i. Principal Work

As a preliminary matter, there is sufficient evidence to support the Employer’s claim that the Coordinators have subordinates. To be considered a supervisor, a petitioned-for employee must have subordinates. 5 ILCS 315/3(r); Vill. of Justice, 17 PERI ¶ 2007 (IL SLRB 2000); Village of Maywood, 4 PERI ¶ 2014 (IL SLRB 1988). Although Manager Greene testified that the clerks report to her, the evidence demonstrates that the clerks also report to the Coordinators. The Coordinators have responsibility to monitor the clerks, review their work, train them, and sign their disciplinary forms. Some Coordinators also have responsibility to evaluate the clerks and track their attendance. Notably, it is not unusual for a subordinate to report to more than one individual in an understaffed hospital with multiple worksites and multiple shifts. County of Cook, Health and Hospital System, 35 PERI ¶ 149 (IL LRB-LP ALJ 2019) (noting that the county hospital system had a “matrix” reporting structure where one employee could report to more than one individual). The clerks’ job description does not weigh against this finding because it appears inaccurate. It references neither the managers nor the Coordinators as the clerks’ superiors and states instead that the clerks report to the System Director of Patient Access, a position whose incumbent was not clearly identified in the record.

Turning to the merits, the Coordinators satisfy the principal work requirement. In determining whether the principal work requirement has been met, the initial question is whether the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different. City of Freeport, 135 Ill. 2d at 514. If the answer is yes, the principal work requirement is satisfied. Id. If the answer is no, the determinative factor is

whether the “nature and essence” of the alleged supervisor's principal work is substantially different than the “nature and essence” of his or her subordinates' principal work. Id. This requires the Board to consider the petitioned-for employees’ supervisory authority and the ability to exercise it at any time, and to identify the point at which the employee's supervisory obligation conflicts with his or her participation in union activity with the employees he or she supervises. Id. at 518. However, the “mere possession of any supervisory indicia is insufficient to change the nature and essence of substantially similar principal work.” Vill. of Burr Ridge, 23 PERI ¶ 102 (IL LRB-SP 2007); Chief Judge of the Circuit Court of Cook County, 6 PERI ¶ 2047 (IL SLRB 1990).

Here, the Coordinators’ principal work is obviously and visibly different from that of their subordinates, the clerk Vs. The Coordinators’ principal work is to perform audit and quality-monitoring functions by completing productivity reports for the clerks and investigating registration errors. By contrast, the clerks register and admit patients by collecting and recording the patient’s insurance, demographic, and financial data. Although the Coordinators sometimes perform registration duties, they do so only when necessary, when the division is short-staffed, and the clerk Vs never perform the Coordinators’ principal work of quality control. State of Illinois, Department of Central Management Services (Department of Human Services), 26 PERI ¶116 (IL LRB-SP 2010) (petitioned-for employees’ work was obviously and visibly different because they performed the same work of their subordinates’ only when necessary); County of Cook, 15 PERI ¶ 3022 (IL LLRB 1999) (responsibility for a shift, performance of administrative tasks, and performance of subordinates’ work only in a backup capacity rendered petitioned-for employees’ work obviously and visibly different); cf. Flagg Rochelle Park District, 20 PERI ¶75 (IL LRB-SP 2004) (principal work of petitioned-for employee was not obviously and visibly different where he spent a majority of his day completing the same tasks as his subordinates; Board found it to be different in nature and essence).

There is insufficient support for the Union’s assertion that the Coordinators spend most of their work time performing clerk duties and that their principal work is therefore substantially the same as the clerks’. The most specific evidence regarding worktime concerned Jones. However, as of the date of hearing in this case, Jones spent less than 16 hours of a 35-hour workweek performing registrations. Although there was a period between September 2017 and February 2018 where Jones performed clerk duties for an additional seven hours each week

(Saturdays), there is no indication that such a regular assignment has ever recurred or that it is likely to recur.

In the alternative, the Coordinators have administrative functions that render the nature and essence of their principal work substantially different from that of their subordinates' principal work. They evaluate their subordinates, track their attendance, consider requests for time off, correct their subordinates' errors and provide them training, bring performance issues to their managers' attention, and draft disciplinary action forms. These functions may not rise to the level of supervisory authority under Section 3(r) of the Act, but they do differentiate the nature and essence of the Coordinators' principal work from their subordinates' principal work. Moreover, while not every Coordinator performs all of these tasks, each performs at least some of them. City of Freeport, 135 Ill. 2d at 528 (lieutenants' authority to direct their subordinates distinguished their principal work from that of the firefighters even though the direction they provided did not rise to the level of supervisory authority); Vill. of Elk Grove Vill., 8 PERI ¶ 2015 (IL SLRB 1992) (noting the Freeport Court's reliance on indicia that did not rise to the level of supervisory authority when addressing the nature and essence test); Village of Bellwood, 19 PERI ¶106 (IL LRB-SP 2003)(applying similar analysis); Pike County Housing Authority, 28 PERI ¶ 13 (IL LRB-SP 2011) (considering petitioned-for employee's unique administrative functions in determining, in the alternative, that her work was different in nature and essence).

In sum, the Coordinators satisfy the principal work requirement.

ii. Supervisory Indicia and Independent Judgment

The Coordinators do not exercise any indicia of supervisory authority. The Coordinators do not discipline their subordinates with independent judgment or effectively recommend the same. Although the Coordinators do exercise independent judgment in the interests of the employer when directing their subordinates, that authority is not supervisory because they lack significant discretionary authority to affect their subordinates' terms and conditions of employment.

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust

grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature. City of Freeport, 135 Ill. 2d at 520.

Moreover, the alleged supervisor must exercise his independent judgment in the “interest of the employer.” In Freeport, the Court held that decisions made merely on the basis of the alleged supervisor’s superior skill, experience, or knowledge do not require the petitioned-for employee to exercise independent judgment “in the interest of the employer.” City of Freeport, 135 Ill. 2d at 531. However, the Board has clarified that the petitioned-for employee’s exercise of superior, skill, experience, and knowledge does not itself preclude a finding of supervisory authority. Rather, the critical question is whether the petitioned-for employee uses those attributes to ensure that his subordinates comply with standards established by the employer, thereby acting in the interest of the employer, or simply to ensure compliance with industry-wide or professional norms and standards. State of Illinois (Department of Central Management Services), 11 PERI ¶2021 (IL SLRB 1995); see also Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123 (IL LRB-SP 2003).

a. Discipline

The Coordinators do not discipline their subordinates with the requisite independent judgment or effectively recommend the same.

To constitute discipline within the meaning of the Act, reprimands must have an impact on an employee’s job status or terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶ 125 (IL SLRB 2003). Documented verbal reprimands constitute supervisory authority to discipline if 1) the individual has the discretion or judgment to decide whether to issue such a reprimand, 2) the reprimand is documented, and 3) the reprimand can serve as the basis for future disciplinary action, that is, it functions as part of a progressive disciplinary system. Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469, 478 (2nd Dist. 2005); Village of Hinsdale, 22 PERI ¶ 176 (IL SLRB 2006); see also Northern Illinois University (Department of Safety), 17 PERI ¶ 2005 (IL LRB-SP 2000) (verbal reprimands that are not recorded are not discipline within the meaning of the Act).

As a preliminary matter, both “records of in-service training” (hereinafter, “in-services”) and counselings are part of the progressive disciplinary process and qualify as discipline under

the Board's case law. They are documented, placed in the subordinate's personnel file, and serve as the basis for subsequent disciplinary actions including verbal reprimands, written reprimands, and suspensions. See cases supra. If a clerk has received three to five in-services for a particular type of infraction, the clerk will receive a documented counseling for the next occurrence of that behavior, which appears on a disciplinary action form. Once a clerk has received a counseling for a particular type of infraction, another instance of that same infraction will warrant a verbal reprimand. In turn, a prior verbal reprimand can justify higher-level discipline for future infractions of the same type. Accordingly, the in-services and the counselings are part of the Employer's progressive disciplinary system.

Here, the Coordinators draft in-service forms and disciplinary forms for their subordinates, which document counselings and verbal reprimands. However, there is insufficient evidence that the Coordinators exercise independent judgment in recommending whether a clerk should receive discipline, in the first instance, or the level of discipline a clerk should receive.

As a threshold matter, there is insufficient evidence from the record that the Coordinators can choose between a disciplinary approach to correcting a subordinates' behavior and a non-disciplinary approach. The Coordinators must report all instances in which they believe a subordinate has violated the Employer's rules. In cases, involving attendance, Manager Woodson has directed Jones to track employees' attendance to provide her with the raw materials so that she (Woodson) can determine who should receive attendance-related discipline. There is no indication from the record that the Coordinators have ever exercised discretion to decline to report an instance of misconduct based on mitigating circumstances, or that they would be permitted to do so. State of Illinois, Department of Central Management Services (Department of Transportation), 28 PERI ¶ 20 (IL LRB-SP 2011) (mere notification to superior of potential rule violations not indicative of supervisory authority); Village of Bolingbrook, 19 PERI ¶ 125 n. 6 (same).

Some Coordinators may decide to perform an informal training before informing their superiors of a performance issue, but there is insufficient evidence that they have discretion to forgo documenting the event after reporting the violation. The record reveals no instances in which a Coordinator identified a performance issue, declined to report it, and corrected it without issuing the subordinate either a documented in-service or a disciplinary action form. Northern Illinois Univ. (Dep't of Safety), 17 PERI ¶ 2005 n. 17 (no independent judgment found where

record did not reveal whether petitioned-for employees had discretion to ignore what they viewed as minor offenses); cf. City of Peru v. Illinois State Labor Relations Bd., 167 Ill. App. 3d 284, 293-4 (3d Dist. 1988) (police lieutenants and supervisors exercised independent judgment despite working in a highly regulated environment where they could pick and choose the rules that would be followed); cf. Chief Judge of the Circuit Court of Cook County, 33 PERI 60 (IL LRB-LP 2016) (independent judgment found where petitioned-for employees could select a non-disciplinary approach to an infraction that could equally warrant disciplinary action); cf. County of Cook (Health and Hospital System), 32 PERI ¶ 55 (IL LRB-LP 2015) (same); cf. Vill. of Campton Hills, 31 PERI ¶ 132 (IL LRB-SP 2015) (petitioned-for employee could address a subordinate's conduct verbally or by documenting it in Personnel Incident Report, which qualified as discipline under the Act).

Next, the Coordinators do not exercise independent judgment in recommending the level of discipline a clerk should receive because the Employer's policies and the managers' involvement in the process significantly limit the Coordinators' discretion. As a preliminary matter, the Coordinators do not determine when discipline should progress from an in-service training to a disciplinary action form. Although the progressive discipline policy does not create a bright-line test for making this determination, in practice, the managers decide when the in-service forms are insufficient to address the performance issues. The Employer's policy provides that a clerk must receive three to five in-services before receiving a disciplinary action form. Yet, the managers require the Coordinators to complete disciplinary action forms, as opposed to in-service forms, whenever a clerk has failed to meet the 90% accuracy metric. Similarly, in cases involving violations of the attendance policy, Manager Woodson identifies the individuals who should receive disciplinary action and also the level of discipline that the employees should receive. In the one case where Jones attempted to persuade Woodson to grant leniency to an otherwise good employee who was never very late, Woodson nevertheless imposed discipline. Finally, in cases involving discrete claims denial errors, Manager Greene informs the Coordinators via email as to when the mistakes are so prevalent that the Coordinators must issue the clerks disciplinary forms instead of in-services.

Manager Greene identified a situation involving a rude clerk in which she claimed that Taylor recommended that an in-service was more appropriate than a disciplinary counseling, but the preponderance of the evidence does not show a recommendation. The documentary evidence

does not include a recommendation. In addition, Taylor asserted that she did not make a recommendation when she provided Greene with the explanation of the incident, and that Manager Greene had not asked her for one.

Even if the Board determines that Coordinator Taylor made a recommendation, there is insufficient evidence that Taylor exercised independent judgment in doing so. Greene testified that a Coordinator cannot recommend a counseling unless a clerk has received three to five in-service training forms on the issue in question. Absent further evidence regarding the clerk's disciplinary history, it is impossible to determine whether Taylor had discretion to recommend anything other than an in-service. Indeed, based on the evidence presented, it is equally likely the clerk had no prior history of in-services and that the Employer's policy therefore required Taylor to recommend an in-service.¹¹

Finally, there is insufficient evidence that the Coordinators exercise independent judgment in recommending whether an employee should receive a disciplinary counseling or a verbal reprimand for repeated infractions. The authority of the two Coordinators to make recommendations is different, but neither of the Coordinators exercises independent judgment.

Coordinator Taylor makes recommendations on whether employees should receive a disciplinary counseling or a verbal reprimand for repeated infractions. However, her recommendations do not require a choice between two or more significant courses of action. As noted above, in cases where the clerks have not yet received a counseling, Greene alerts the Coordinators as to when training has failed, and disciplinary counseling should issue. Moreover, in cases where a clerk has already received a counseling for a particular type of infraction, the Coordinator must recommend the next level of disciplinary action for a subsequent infraction of the same type and has no discretion to recommend a second counseling.

Jones does not make recommendations on whether employees should receive a disciplinary counseling or a verbal reprimand for repeated infractions. Jones testified that she does not make recommendations regarding the level of discipline that should issue, and that Woodson instead tells her what to write. This testimony finds support in Woodson's assertion

¹¹ Even if the clerk's prior disciplinary history created some ambiguity over the appropriate course of action, there is insufficient evidence in the record that Manager Greene would have allowed Taylor to address that ambiguity through an effective recommendation. To the contrary, the evidence demonstrates that Greene informs the Coordinators when she believes that training is no longer sufficient to address a performance deficiency.

that she discusses the disciplinary matter with Jones before Jones drafts the disciplinary action form. Accordingly, the disciplinary action form produced by Jones is not an independent recommendation based on her own judgment but is a product of her supervisor's judgment. At best, the decision as to the level of discipline is a joint, collaborative effort between Jones and her own supervisor, which significantly constrains Jones's exercise of independent judgment. Even if the Board determines that Jones makes a recommendation regarding the level of discipline issued to clerks on disciplinary action forms, the progressive discipline framework, discussed above, renders her recommendation a routine and clerical function. Dep't of Cent. Mgmt. Services v. Illinois Labor Relations Bd., 2012 IL App (4th) 110209, ¶ 25 (where petitioned-for employees engaged in collaborative decision-making with their superiors regarding discipline, they did not exercise independent judgment); see also, Village of Downers Grove, 6 PERI ¶ 2035 (IL SLRB 1990), aff'd 221 Ill. App. 3d 47, 8 PERI ¶ 4002 (1991) (petitioned-for employee's participation on committee with his own superior rendered his authority too diffuse to constitute supervisory authority).

In sum, the Coordinators do not effectively recommend discipline with the requisite independent judgment.

b. Direction

The Coordinators direct their subordinates with independent judgment in the interests of the Employer when they correct their subordinates' work and provide them with instruction. The Coordinators do not direct their subordinates with the requisite independent judgment when they review or monitor their subordinates' work in other respects, assign them work, consider requests for time off, and make recommendations on their evaluations. However, the Coordinators' authority to direct does not constitute supervisory direction because the Coordinators lack significant discretionary authority to affect their subordinates' terms and conditions of employment.

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, 15 PERI ¶3022 (IL LLRB 1999), aff'd by unpub. order. 16 PERI ¶4004 (1999); 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 (1st Dist. 2004) (citing City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499); Illinois Dept. of Cent. Mgmt. Services (State Police) v. Illinois Labor Relations Bd., State Panel, 382 Ill. App. 3d 208, 228 (4th Dist. 2008) aff'ing State of Illinois, Departments of Central Management Services and State Police, 23 PERI 38 (IL LRB-SP 2007); County of Lake, 16 PERI ¶ 2036; County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶ 3022.

i. Oversight/ Review

The Coordinators direct their subordinates with independent judgment in the interests of the Employer when they review the clerks' registrations to determine whether the clerks erred in identifying a patient's insurer. However, they do not exercise independent judgment when they oversee their subordinates and review their work in any other respect.

For the Coordinators' oversight and review of their subordinates to constitute the statutory authority to direct, they must perform such review in the interests of the employer. 5 ILCS 315/3(r). A petitioned-for employees' oversight review of her subordinates' work is performed "in the interests of the employer" when she requires the subordinate to perform the work in the manner prescribed by the standards and regulations established by the Employer. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123; State of Illinois (Department of Central Management Services), 11 PERI ¶2021. However, a petitioned-for employee's work is not performed in the interest of the employer where she reviews her subordinate's work to ensure compliance with industry-wide or professional norms and standards. Cf. State of Illinois (Department of Central Management Services), 11 PERI ¶2021. To show that the petitioned-for employee performs review or oversight functions "in the interest of the employer," the Employer must describe the policies, identify whether they are policies promulgated by the Employer or mandated by professional norms, and explain how the petitioned-for employees apply them.

Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123. Notably, the petitioned-for employees may oversee and review their subordinates work in the interests of the employer, even if they exercise superior skill, experience, and expertise, provided that they ensure that 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 v. ISLRB, 135 Ill. 2d 499 (1990)).

In addition, the petitioned-for employees must oversee and review their subordinates’ work with the consistent exercise of independent judgment. They must be actively involved in checking, correcting, and giving instructions to subordinates, without guidelines or review by others. County of Cook, 15 PERI ¶3022; County of Lake, 16 PERI ¶ 2036; City of Lincoln, 4 PERI ¶ 2041 (IL SLRB 1988); City of Chicago, 10 PERI ¶ 3017 (IL LLRB 1994). In addition, their oversight and review activities must not be routine or clerical. City of Freeport, 135 Ill. 2d at 520.

Here, the Coordinators review the clerks' work in the interests of the employer with the requisite independent judgment when they review the clerks’ registrations to determine whether the clerks erred in identifying a patient’s insurer. The Coordinators perform such work in the interest of the Employer because their review ensures that their subordinates maintain a high level of accuracy in patient registrations, as the Employer’s performance metrics require. In addition, the Coordinators exercise independent judgment in identifying such errors and providing their subordinates with instruction on how to correctly identify the patient’s insurance. They rely on their specialized knowledge of insurance registration and past experience as clerks and/or financial counselors at the County to determine whether a clerk has erred in identifying the patient’s insurer. The examples in the record confirm that the Coordinators’ review is not routine or clerical and instead requires background knowledge of the County’s processes and its relationships with insurers. For example, in one case involving a claim denial, Coordinator Taylor observed that the clerk registered a patient as having coverage under a Cigna Health Spring Medicare plan, whereas the Employer’s insurance verification system showed that the patient had coverage under a different Medicare plan, Medicare Advantage. She additionally determined that the clerk should have registered the patient as “self-pay noncontracted” because the Employer was “not contracted with [the patient’s] insurance plan.” Notably, the Coordinators’ exercise of their superior skill and knowledge does not diminish the fact that they

provide such review and oversight in the interests of the Employer. State of Illinois (Department of Central Management Services), 11 PERI ¶2021; cf. City of Freeport, 135 Ill. 2d at 532 (lieutenants' instruction at fire scene did not require exercise of independent judgment in the interest of the employer); Cf. County of Lake, 16 PERI ¶ 2036; cf. County of Cook, 27 PERI ¶ 58 (nursing supervisor's guidance to subordinates on how to insert an IV did not require the exercise of independent judgment within the meaning of the Act); cf. City of Naperville, 8 PERI ¶ 2016 (IL SLRB 1992) (providing objective, factual information to subordinates about dispatching methods, computer use, or jurisdiction did not require exercise of independent judgment within the meaning of the Act).

However, the Coordinators do not exercise independent judgment in performing other oversight and review functions. Most of the review that the Coordinators perform on the clerks' registrations is routine and does not require the consistent exercise of independent judgment. Rather, they simply check the work for completeness and measure the clerks' performance against pre-established standards. They review ten random registrations completed by each clerk and determine whether the clerk has scanned all the required documents into the system, including patient ID, consent forms, HIPAA forms, and demographic information, which includes the patient's address and telephone number, insurance type, and emergency contact. They then assess the quality of the clerks' work using a rigid metric, established by the Employer, from which they have no discretion to deviate. A Coordinator must subtract ten percentage points for every application that contains one mistake. A Coordinator cannot change how she scores the accuracy rating, and her assessment of the clerks' work in this regard is purely objective. County of Cook, Office of the Medical Examiner, 6 PERI ¶ 3011 (IL LLRB 1990) (review of subordinates' work against quality control guidelines did not require exercise of independent judgment); County of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-LP 2015) (checking work for completeness did not require exercise of independent judgment).

Likewise, the Coordinator's review of the clerks' productivity reports is a routine and clerical function. The clerks' productivity reports list the number of registrations and special assignments they have completed in a given period, and the Coordinator simply performs basic arithmetic to ensure that the clerks have tallied the numbers correctly. Peoria Hous. Auth., 10 PERI ¶ 2020 (IL SLRB 1994) (quality control reviews to check calculation and to ensure files were properly organized did not require exercise of independent judgment).

Similarly, the Coordinators do not exercise independent judgment when they complete observation forms because they simply follow a checklist to ensure that the clerks have completed all the listed tasks. Checking a subordinate's work for completeness is a routine or clerical task that does not require the consistent exercise of discretion. County of Cook (Health & Hospital System), 31 PERI ¶ 154.

There is insufficient evidence that the Coordinators exercise independent judgment in the interests of the Employer when they make regular rounds.¹² There is no indication that they perform these rounds to identify violations of the Employer's policies or that they exercise independent judgment in determining how to address such policy violations. Coordinator Jones provided the most specific evidence regarding the performance of rounds, and she explained that her function was to check that the clerks were present, to ensure that they had sufficient office supplies and to ensure that work flowed by stepping in and registering patients when volume was high. Cf. Chief Judge of the Circuit Court of Cook County, 33 PERI ¶ 60 (IL LRB-LP 2016) (petitioned-for employees identified policy violations during rounds and determined whether to address them with training or discipline).

There is no merit to the Employer's assertion that the Coordinators' future responsibilities are relevant to an assessment of their alleged present supervisory authority. The reasonable expectation test, cited by the Employer on brief, is inapplicable to this case. First, it applies to the confidential exclusion, not the supervisory exclusion, and only where the Employer is new to collective bargaining, which in this case it is not. Chief Judge of the Cir. Court of Cook Cnty. v. Am. Fed of State Cnty. and Mun. Empl., Council 31, 153 Ill. 2d 508, 524 (1992); Health & Hosp. Sys. of County of Cook v. Illinois Labor Relations Bd., Local Panel, 2015 IL App (1st) 150794, ¶ 56 (reasonable expectation test did not apply where a bargaining unit was already established); Support Council of District 39 v. IELRB, 366 Ill. App. 3d 830, 837, 304 (1st Dist. 2006) (same); City of Chicago, 31 PERI ¶ 6 (IL LRB-LP 2014) (same); State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Healthcare and Family Servs.), 28 PERI ¶ 69 (same); City of Springfield, 27 PERI ¶ 69 (IL LRB-SP 2011) (same); Cf. One Equal Voice v. Illinois Educ. Labor Relations Bd., 333 Ill. App. 3d 1036, 1044 (1st Dist. 2002) (remanding for application of reasonable expectation test, even though College was not new to collective bargaining, where department had "recently undergone a complete restructuring" that newly

¹² Only Jones performs rounds.

involved the department in collective bargaining).

The Employer cites no case in which the Board has applied the reasonable expectation test to supervisory status. Moreover, the Act's definition of a supervisor provides that supervisory authority must be exercised to meet the statutory definition. 5 ILCS 315/3(r). "Authority not yet possessed nor exercised cannot be considered for the purpose of excluding an individual from employee status." Southern Illinois Univ. Board of Trustees, 4 PERI ¶ 1030 (IL ELRB 1987) (considering similarly definition of "supervisor" set forth in the Illinois Public Educational Labor Relations Act). Here, the Employer contends that it intends to open a Central Registration Department at Stroger Hospital and that it expects the Coordinators' responsibility to increase, "when the situation presents." However, consideration of those currently speculative duties is inappropriate at this time. Indeed, no witness was able to unequivocally describe how the anticipated reorganization would impact the Coordinators' authority. Although management informed Taylor that she would receive more subordinates, it is unclear how many she would receive. Indeed, the Employer has open positions for Coordinators at Stroger, which, if filled, might shoulder the burden of additional subordinates, and minimize the reorganization's impact.

ii. Training

The Coordinators do not train their subordinates with the requisite independent judgment.

Providing training is not per se a supervisory function, but it can be when the petitioned-for employee chooses between discipline or training. State of Illinois, Department of Central Management Services, 26 PERI ¶ 116 (IL LRB-SP 2010); Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123. The party seeking exclusion must demonstrate independent judgment in training. State of Illinois, Department of Central Management Services, 26 PERI ¶ 116. However, as discussed above, there is insufficient evidence that the Coordinators have authority to recommend training in lieu of discipline to correct performance deficiency. Cf. Vill. of Campton Hills, 31 PERI ¶ 132 (petitioned-for employee could address a subordinate's conduct verbally or by documenting it in Personnel Incident Report, which qualified as discipline under the Act).

There is also insufficient evidence that the Coordinators effectively recommend group training. Although the Coordinators may make recommendations on group training using independent judgment, there is insufficient evidence that the managers adopt those

recommendations as a matter of course with little if any independent review. The Coordinators make recommendations on group training based on their observation of their staff, which necessarily requires a subjective assessment. However, there is no evidence as to the frequency with which the Coordinators make such recommendations or the frequency with which the managers accept them. Moreover, the evidence strongly suggests that the managers perform extensive review of any such recommendations. Greene explained that she reviews a compilation report, which summarizes Coordinators' quality reports, before determining whether group training is needed.

iii. Assignment

There is insufficient evidence that the Coordinators exercise independent judgment when making assignments. A purported supervisor exercises independent judgment in making assignments when he considers discretionary factors such as his knowledge of the individuals involved, the nature of the task to be performed, the employees' relative levels of experience and skill, and the Employer's operational needs. Cnty. of Cook and Sheriff of Cook County, 15 PERI ¶ 3022 (IL LLRB 1999). However, assignment of work that merely balances the workload among employees does not require the use of independent judgment. Chief Judge of the Circuit Court, 153 Ill. 2d at 518 and 521; 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 531.

Here, the Coordinators primarily change the clerks' work location assignments to balance the workload in cases where there is uneven coverage. There are some cases in which the Coordinator must take into account a clerk's prior training to determine whether to make the assignment, but this is not a discretionary factor or one that requires the exercise of independent judgment. Determining whether a clerk has been trained in the required function is an objective assessment with an easily discernable binary answer—either the clerk has received training in that subject, or she has not. See County of Cook, Office of the Medical Examiner, 6 PERI ¶ 3011. As long as the clerk has satisfied the threshold requirement of training, the Coordinator makes no further inquiry into the clerk's suitability for the assignment and does not consider the other clerks' relative levels of experience and skill in relation to the employer's operational

needs.

iv. Time off and Scheduling

The Coordinators do not exercise the supervisory authority to direct when addressing requests for time off or scheduling their subordinates.

The Coordinators do not exercise independent judgment when approving time off for the clerks. The ability to approve or deny a request for time off is a form of supervisory authority to direct within the meaning of Section 3(r) of the Act unless the exercise of that authority involves decisions that are merely routine or ministerial in nature. Village of Broadview v. Illinois Labor Relations Board, 402 Ill. App. 3d 503, 511-12 (1st Dist. 2010) (collecting ILRB cases). A decision to allow leave is routine when it is constrained by considerations such as seniority, predetermined staffing or manpower requirements, department rules, or a collective bargaining agreement. Village of Broadview, 402 Ill. App. 3d at 511-12 (considering seniority and predetermined staffing requirements); Village of Morton Grove, 23 PERI ¶ 72 (IL SLRB 2007). Likewise, approval of leave requests is a clerical function where the petitioned-for employee routinely approves them, provided that the minimum staffing needs are met and the requesting employee is entitled to the time. Circuit Clerk of Champaign Cnty., 17 PERI ¶ 2032.

The Coordinators do not exercise independent judgment when granting and denying vacation or time off requests because the Employer's policy provides that only one clerk may take time off on any given shift. Accordingly, Coordinator Jones routinely denies time off requests when one other employee has already been granted time off for the shift. Conversely, Coordinator Jones routinely grants requests for time off provided that the requesting employee has the accrued time and no other employee has requested time off on that shift. Notably, Coordinator Jones's authority to make decisions on requests for time off is further circumscribed by the fact that Woodson has informed Jones that she must discuss all requests for time off with her before granting or denying them. Vill. of Glen Carbon, 8 PERI 2026 (IL SLRB 1992) (granting vacation request did not require independent judgment where policy allowed only one person per shift to go on vacation at a given time, but finding independent judgment in granting other types of leave requests).

Likewise, the Coordinators do not exercise independent judgment when establishing a weekly schedule that sets employees' work location assignments, lunchtime, and any scheduled

overtime. Coordinator Taylor is the only Coordinator who establishes a weekly schedule, yet no aspect of the schedule's development requires the consistent exercise of independent judgment. She does not exercise independent judgment in determining work location assignments because she assigns the clerks to a work location based on a regular rotation, and she deviates from it only to ensure coverage and balance the workload when a clerk has called off. She does not exercise independent judgment in determining the clerk's lunch periods because the record does not reveal the basis for her decision-making. Vill. of Glen Carbon, 8 PERI 2026 (where record did not reveal the basis for petitioned-for employee's decision, ALJ could not determine whether the judgment was routine and clerical or independent). Moreover, her decisions are significantly circumscribed by Manager Greene's directive that she must schedule lunches for the earlier shifts between 7 am and 12 pm, and that she should schedule the lunches on the late shift between 12 pm and 4 pm.

Notably, the Coordinators do not make recommendations or decisions on overtime when drafting the schedule. Recommendations for overtime require independent judgment when the petitioned-for employee must determine whether to use overtime or to instead perform the work with the available manpower. State of Ill. (Dep't of Cent. Mgmt. Servs.), 12 PERI ¶ 2032 (IL SLRB 1996). However, overtime decisions do not require the exercise of independent judgment if they are made based on criteria over which the petitioned-for employee has no control, such as minimum manning requirements or seniority. Vill. of Bolingbrook, 19 PERI ¶ 125; County of Vermilion, 18 PERI ¶ 2050. Here, the Coordinators simply notify a manager when staffing has fallen below the minimum levels, and the managers determine whether to call clerks in on overtime.

Finally, the Coordinators do not have authority to change employees' days off. On the one occasion when Coordinator Jones switched a clerk's days off to accommodate the clerk's schooling, Woodson informed her that she did not have authority to do so and issued her a counseling.

v. Evaluations

The Coordinators do not exercise supervisory authority when making recommendations on the evaluation of their subordinates. Although the Coordinators exercise independent judgment in completing evaluations for the clerks, there is insufficient evidence that their

recommendations are effective or that the evaluations affect the subordinates' terms and conditions of employment.

Of the Coordinators, only Jones has completed evaluations for her subordinate clerks, and she exercises independent judgment in completing them because she evaluates them in areas that require subjective assessments such as effectiveness, initiative, professionalism, and judgment. Chief Judge of the Circuit Court of Cook County, 33 PERI ¶ 60 (subjective assessment of work performance demonstrates exercise of independent judgment); c.f. State of Ill., Dep't of Cent. Mgmt. Servs. (State Police), 382 Ill. App. 3d at 227 (where there was no evidence concerning the categories in performance evaluations, the court was “unable to say that the categories [were] more subjective than quantitative,” and therefore found that the petitioned-for employees did not exercise independent judgment).

However, Jones's recommendations on those evaluations are not effective. A recommendation is effective within the meaning of Section 3(r) of the Act when it is adopted as a matter of course with very little if any independent review. Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶ 30; Illinois Dept. of Cent. Mgmt. Services (State Police), 382 Ill. App. 3d at 225; Village of Justice, 17 PERI ¶ 2007; Peoria Housing Authority, 10 PERI ¶ 2020, aff'd by unpub. order, No. 3-90317 (1995); Chicago Park District, 9 PERI ¶ 3007 n. 3 (IL LLRB 1993). However, since the term recommendation implies some form of review by the person to whom the recommendation is made, a recommendation may still be effective even if it is not rubberstamped. City of Peru, 167 Ill. App. 3d at 290. The extent of that review is a factor in determining whether the recommendation is effective. State of Illinois, Department of Central Management Services, 25 PERI ¶ 161 (IL LRB-SP 2009) (citing City of Peru, 167 Ill. App. 3d 284); Village of Glen Carbon, 8 PERI ¶ 2026 (IL SLRB 1992)). Courts have also noted that the “litmus test” of effective recommendation is whether the recommendations “almost always persuade the superiors.” Serv. (Ill. Commerce Comm'n) v. Ill. Labor Rel. Bd., State Panel, (“ICC”), 406 Ill. App. 3d 766, 777 (4th Dist. 2010).

Here, Woodson accepts Jones's recommendations no more than 66% of the time, far less than “almost always.” Of the five evaluations that Jones has completed Woodson has made changes to the overall ratings of two of them, and there is also some evidence that Woodson modified part of a third evaluation, without affecting the overall score. Moreover, the preponderance of the evidence demonstrates that Woodson performs an extensive independent

review of the employees Jones evaluates. Not only does Woodson review the documentation underlying all the evaluations, she also relies on her own observations of the employees in question and her observation of their relationships with Jones. For example, in one case, Woodson rejected Jones's rating of "outstanding" for an employee because she believed that the employee's performance was on par with that of another employee, whom Jones had rated as only "very good." Furthermore, Woodson based her assessment both on the documentary evidence, i.e., the work performance spreadsheets provided by Jones, and on "actually witnessing" the two employees.

Furthermore, the Coordinators' authority to make recommendations on evaluations is not evidence of supervisory authority to direct because the evaluations do not affect the subordinates' pay or employment status. Responsibility for formally evaluating or rating work performance is evidence of the authority to direct when the rating or evaluation is used to affect the employees' pay or employment status. City of Carbondale, 27 PERI ¶ 68 (IL LRB-SP 2011); County of Lake, 16 PERI ¶ 2036; State of Ill., Dep't. of Cent. Mgmt. Services (Division of Police), 4 PERI ¶ 2013 (IL SLRB 1988). Here, the Employer offered no testimony that the evaluations have an impact on the clerks' terms and conditions of employment, and it pointed to no documentary evidence to support such a claim. Indeed, Coordinator Jones testified that, to her knowledge, the evaluation had no effect on employee wages, hours, and working conditions. Accordingly, the Employer appears to use them solely to provide the clerks with feedback on their performance. County of Lake, 16 PERI ¶ 2036 (evaluations to chart employee progress and determine whether increased training is necessary are not indicative of supervisory authority because they do not affect employment status); cf. Vill. of Hinsdale, 22 PERI ¶ 176 (patrol officer was required to achieve an overall "standard" to receive a scheduled pay increase, and officers could be denied a promotion based on a negative overall rating); cf. State of Illinois, Dep't. of Central Management Services (Division of Police), 4 PERI ¶ 2013 (officer who did not receive a satisfactory performance evaluation was not entitled to the annual contractual wage increase).

In sum, the Coordinators' authority to make recommendations on the evaluations of their subordinates is not evidence of the supervisory authority to direct.

iii. Preponderance

The Coordinators do not spend a preponderance of their time exercising supervisory authority.

To satisfy the fourth prong of the supervisor test, the Employer must demonstrate that the petitioned-for employees spend a preponderance of their employment time exercising supervisory authority. 5 ILCS 315/(r)(1).

Preponderance of time can be measured quantitatively or qualitatively. State of Ill. Dep't of Cent. Mgmt. Serv., 278 Ill. App. 3d at 85-86 (“‘Preponderance’ can mean superiority in numbers or superiority in importance”). Measured quantitatively, an employee spends a preponderance of his time on supervisory functions when he spends more time on supervisory functions than on any one nonsupervisory function. City of Freeport, 135 Ill. 2d at 533. Measured qualitatively, an employee spends a preponderance of his time on supervisory functions when these functions are more significant than his non-supervisory functions, regardless of the amount of time spent on these supervisory functions. State of Ill. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79 at 85. The employer must provide details with respect to the amount of time the purported supervisor spends engaged in supervisory functions or the significance of these functions. Sec'y of State v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 111075, ¶ 108-116.

Here, the Coordinators do not spend a preponderance of their work time exercising supervisory authority because they do not exercise any supervisory authority at all. “Supervisory authority is that which when exercised affects the employment of subordinates in ‘areas . . . most likely to fall within the scope of union representation....’” City of Naperville, 8 PERI ¶ 2016 (quoting City of Freeport, 135 Ill. 2d 499). However, as discussed above, the Coordinators do not exercise authority to effectively recommend the discipline of their subordinates. Moreover, their authority to direct does not entail any significant discretionary authority to impact their subordinates’ terms and conditions of employment in areas likely to fall within the scope of union representation. State of Illinois, Department of Central Management Services (Department of Public Health), 27 PERI ¶ 10 aff'd by Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶ 34 & 35; City of Naperville, 8 PERI ¶ 2016.

In sum, the Coordinators are not supervisors within the meaning of Section 3(r) of the Act.

2) Cashier Division Supervisor IIs

i. Existence of Subordinates

As a preliminary matter, there is sufficient evidence to support the Employer's claim that the CDS IIs have subordinates. To be considered a supervisor, a petitioned-for employee must have subordinates. 5 ILCS 315/3(r); Vill. of Justice, 17 PERI ¶ 2007; Village of Maywood, 4 PERI ¶ 2014. Although Manager Brown testified that the cashiers report to her, the evidence demonstrates that the cashiers also report to the CDS IIs. The CDS IIs have responsibility to monitor the cashiers and review their work. CDS II Robinson noted that his responsibilities in this respect would be greater with a less experienced cashier, and that his responsibilities would likely also include training. Robinson does not closely monitor the work of the cashier he currently oversees, but this is due to her experience. Furthermore, while Robinson testified that he believed that the cashiers reported to Brown, he did not deny responsibility for monitoring and reviewing the cashiers' work. Notably, it is not unusual for a subordinate to report to more than one individual in an understaffed hospital with multiple worksites and multiple shifts. County of Cook, Health and Hospital System, 35 PERI ¶ 149 (IL LRB-LP ALJ 2019) (noting that the county hospital system had a "matrix" reporting structure where one employee could report to more than one individual). Finally, the job description lends additional support for the conclusion that the cashiers report to the CDS IIs because it articulates such a relationship by describing the CDS IIs' responsibility for the cashiers' work.

ii. Principal Work

The Cashier Division Supervisor IIs ("CDS IIs") satisfy the principal work requirement. Although the principal work of the CDS IIs is not obviously and visibly different from the work of the cashiers, it is different in its nature and essence.

As a preliminary matter, the principal work of the CDS IIs is not obviously and visibly different from that of their subordinates because they spend the majority of their work time performing cashier duties. Specifically, the CDS IIs at Stroger (Thomas and Jones) spend three full days a week working in the pharmacy cashier window, and the CDS II at Oak Forest (Robinson) spends five and a half hours each day working in the cashier booth. Robinson conceded that he might work on his deposit reports and petty cash reports while sitting in the

cashier booth; however, his total estimation of the amount of time required for those reports, approximately an hour and a half, demonstrates that they do not significantly diminish the amount of time he works as a cashier. Moreover, the CDS IIs' obligation to perform cashier work is a regular part of their duties. While the CDS IIs perform cashier work because of short staffing, that short staffing is a chronic issue for the County, and there is no indication that the CDS IIs' performance of cashier duties is a stop-gap measure that the County plans to cure with additional staffing. Flagg Rochelle Park District, 20 PERI ¶75 (principal work of petitioned-for employee was not obviously and visibly different where he spent a majority of his day completing the same tasks as his subordinates; Board found it to be different in nature and essence); cf. State of Illinois, Department of Central Management Services (Department of Human Services), 26 PERI ¶116 (petitioned-for employees' work was obviously and visibly different because they performed the same work of their subordinates' only when necessary); cf. County of Cook, 15 PERI ¶ 3022 (responsibility for a shift, performance of administrative tasks, and performance of subordinates' work only in a backup capacity rendered petitioned-for employees' work obviously and visibly different).

However, the work of the CDS IIs is substantially different in "nature and essence" from the work of their subordinates. The nature and essence test is a qualitative, rather than a quantitative analysis. Flagg Rochelle Park District, 20 PERI ¶75. Here, some CDS IIs serve as the highest-ranked employee on their shift and are responsible for the daily operations during that time, even while they are performing the work of a cashier. City of Freeport, 135 Ill. 2d at 514 (considering the lieutenants' responsibility for the condition of the station and the firefighters); Village of Bellwood, 19 PERI ¶106. The CDS IIs also complete their deposit reports and petty cash reports while seated at the cashier booth, whereas the cashiers exclusively perform cashier duties. In addition, the CDS IIs review their subordinates' batches in addition to their own while performing cashier work, to verify that the amount of money that the Employer receives and maintains is accurate. County of Lake, 16 PERI ¶ 2036 n. 4 (IL SLRB 2000). Finally, the CDS IIs perform other functions which may not themselves rise to the level of supervisory authority under Section 3(r) of the Act but do differentiate their principal work from that of their subordinates. For example, they raise their subordinates' performance issues to their manager's attention and, when called upon, make recommendations as to the appropriate level of discipline that should result. City of Freeport, 135 Ill. 2d at 528 (lieutenants' authority to direct

their subordinates distinguished their principal work from that of the firefighters even though the direction they provided did not rise to the level of supervisory authority); Pike County Housing Authority, 28 PERI ¶ 13 (considering petitioned-for employee's unique administrative functions in determining, in the alternative, that her work was different in nature and essence); see also Village of Bellwood, 19 PERI ¶106 (applying a similar analysis in the alternative).

Thus, the principal work of the CDS IIs is different in its nature and essence than the work of their subordinate cashiers.

iii. Indicia of Supervisory Authority

a. Discipline

The CDS IIs do not effectively recommend discipline for their subordinates with the requisite independent judgment.

They do not make recommendations about whether an employee should receive discipline. Rather, the preponderance of the evidence demonstrates that Manager Brown unilaterally determines whether an employee should receive discipline and that her determination is not based upon any recommendation by a CDS II. In one case, the CDS II Jones simply reported the facts of an incident to Manager Brown, who instructed her to draft a disciplinary action form.¹³ In another case, Manager Brown brought a disciplinary matter to CDS II Thomas's attention, provided her with the documentary evidence to support the imposition of discipline against an employee, and instructed her to draft the disciplinary action forms. Village of Bolingbrook, 19 PERI ¶ 125 n. 6 (reporting an incident without recommending discipline does not constitute authority to effectively recommend discipline); Chief Judge of the Circuit Court of Cook County, 9 PERI ¶ 2033 (IL SLRB 1993) (same); County of Cook, 28 PERI ¶ 85 (petitioned-for employees did not exercise independent judgment where discipline followed from the direction of a superior).

There is also insufficient evidence that the CDS IIs exercise independent judgment in recommending a disciplinary penalty. When Brown identifies the need for discipline, she directs the CDS IIs to review the employee's personnel file to determine the appropriate level of discipline based on the employee's past record. However, the Employer did not explain how the

¹³ Indeed, CDS II Robinson stated that this would be the approach he would take if he observed a clerk committing a policy violation.

CDS II would select a penalty to recommend and how an employee's past disciplinary conduct would influence the CDS II's choice. Absent further evidence, it is difficult to determine whether the CDS IIs exercise independent judgment in making the recommendation. It is evident from the testimony offered regarding the Coordinators, discussed above, that the Employer maintains a progressive discipline framework, under which repeated violations of the same rule lead to increasingly severe penalties. Yet, the Employer did not explain whether the CDS IIs are bound by a similar framework or whether they may consider aggravating or mitigating circumstances. The latter would indicate exercise of independent judgment, while the former would not, and the Employer has not met its burden given the absence of evidence on this issue. County of Cook, 28 PERI ¶ 109 (IL LRB-LP 2012) (no independent judgment where employer followed rigid series of progressive steps disciplinary action, absent evidence that petitioned-for employee had ever recommended deviation from those steps).

Even if the Employer had presented some evidence that the CDS IIs could deviate from the progressive discipline framework, the Employer has presented insufficient evidence that a recommendation to that effect would be accepted as a matter of course with little or no independent review.

In sum, the CDS IIs do not effectively recommend discipline for their subordinates.

b. Direction

The CDS IIs do not direct their subordinates with the requisite independent judgment.

The CDS IIs do not direct with independent judgment when they assign their subordinates to different work locations at times when the department is short-staffed because they simply balance the workload among employees. There is no indication that the CDS IIs consider subjective factors such as employee skill and experience in relation to the task at hand when moving cashiers from one location to another.

The CDS IIs do not direct with independent judgment when they oversee their subordinates. For the CDS IIs' oversight and review of their subordinates to constitute the statutory authority to direct, they must be responsible not only for their subordinates' work but must also oversee them in a manner that involves more than mere observation and monitoring and responsibility for a shift. They must be actively involved in checking, correcting, and giving instructions to subordinates, without guidelines or review by others. County of Cook, 15 PERI

¶3022; County of Lake, 16 PERI ¶ 2036; City of Lincoln, 4 PERI ¶ 2041; City of Chicago, 10 PERI ¶ 3017. The Employer has identified no such active checking and correcting by the CDS IIs. Rather, the CDS IIs work alongside the clerks, performing the same functions they do, or they complete the various reports required of them. Ill. Sec'y of State, 20 PERI ¶ 11 (IL LRB-SP 2003) (finding such work did not require active checking and correcting). Indeed, Manager Brown explained that the oversight provided by the CDS IIs is limited to ensuring that the cashiers are in their work area, working, and that they have enough change to operate the pharmacy. Robinson confirmed he does not watch over the cashier he oversees and does not watch her perform her duties. Although he conceded that he might have greater oversight and training responsibilities if his subordinate were less experienced, there is insufficient evidence in the record that such anticipated activities would require the consistent exercise of independent judgment. City of Chicago, 10 PERI ¶ 3003 (IL LRB-LP 1993) (employer's claim that petitioned-for employee "would have authority to discipline" did not show that the petitioned-for employee would exercise independent judgment).

There is insufficient evidence that the CDS IIs direct with independent judgment in the interests of the Employer when they answer the cashiers' questions. The record does not reveal the nature of the cashier's questions regarding their transactions or the computer problems they encounter. Accordingly, it is difficult to determine whether the questions are routine or whether the CDS IIs must make a choice between two or more significant courses of action in answering them. With respect to transactions-related questions, there is also insufficient evidence as to whether the CDS IIs answer them in the interests of the Employer, i.e., to promote compliance with the Employer's policies, or whether they simply ensure that the cashiers adhere to industry-wide accounting standards.

The CDS IIs do not direct with independent judgment in the interest of the Employer when they review their subordinates' work at the end of the day to ensure that the cashier's register contains the accurate amount of money. This review is a clerical, recordkeeping task that does not require the exercise of independent judgment. The CDS IIs' documentation of this review in a deposit report does not change the fact that their review of their subordinates' work is a purely mathematical calculation. City of Bloomington, 13 PERI ¶ 2041 (IL SLRB 1997) (clerical bookkeeping and recordkeeping tasks associated with insurance accreditation program did not require independent judgment); State of Illinois (Department of Central Management

Services), 11 PERI ¶2021 (noting that methodical checking of mathematical calculation of audit review was a ministerial task, but finding exercise of independent judgment on other grounds). In addition, the CDS IIs do not perform such work “in the interest of the Employer” to ensure that their subordinates have complied with the Employer’s policies. Rather, they instead ensure that their subordinates have adhered to industry-wide accounting standards and professional norms. Cf. State of Illinois (Department of Central Management Services), 11 PERI ¶2021.

iv. Preponderance

The CDS IIs do not spend a preponderance of their work time exercising supervisory authority because they do not perform any of the indicia of supervisory authority alleged by the Employer. State of Illinois, Department of Central Management Services (Department of Public Health), 27 PERI ¶ 10 aff’d by Dep’t of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶ 34 & 35.

In sum, the CDS IIs are not supervisors within the meaning of Section 3(r) of the Act.

5. Managerial Test

Neither of the petitioned-for positions is managerial within the meaning of the Act.

The Act excludes managerial employees from engaging in collective bargaining to “maintain the distinction between management and labor and to provide the employer with undivided loyalty from its representatives in management.” Chief Judge of 16th Judicial Cir. v. Ill. State Labor Rel. Bd., 178 Ill. 2d 333, 339 (1997). Section 3(j) of the Act defines a managerial employee as “an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices.” 5 ILCS 315/3(j). A two-part “traditional test” is used to determine managerial status under Section 3(j): first, the employee at issue “must be engaged predominately in executive and management functions which specifically relate to running a department and include such activities as formulating department policy, preparing the budget, and assuring efficient and effective operations of the department”;¹⁴ and second, “the employee

¹⁴ “Other executive and management functions include using independent discretion to make policy decisions as opposed to following established policy, changing the focus of an employer’s organization, being responsible for day[-]to[-]day operations, negotiating on behalf of an employer with its employees

must direct the effectuation of management policies and procedures.” Vill. of Elk Grove Vill. v. Illinois State Labor Relations Bd., 245 Ill. App. 3d 109, 121-22 (2nd Dist. 1993) (quoted text); City of Evanston v. Ill. State Labor Rel. Bd., 227 Ill. App. 3d 955, 974-975 (1st Dist. 1992).

With respect to the first prong of the test, “executive and management” functions require more than the simple exercise of discretion or specialized expertise; rather, an employee must possess and exercise sufficient authority and autonomy to establish department goals or the means of achieving such goals on a broad scale. Village of Elk Grove Village, 245 Ill. App. 3d at 122 (citing City of Evanston, 227 Ill. App. 3d at 975); Cnty. of Cook, 351 Ill. App. 3d at 386; Dep’t of Cent. Mgmt. Servs /Dep’t of Healthcare & Family Servs. v. Illinois Labor Relations Bd., State Panel, 388 Ill. App. 3d 319, 331 (4th Dist. 2009). Additionally, where an individual’s decisions are significantly circumscribed by predetermined requirements and procedures, the employee’s activities are not managerial under the Act. Eighteenth Judicial Circuit (Chief Judge), 14 PERI 2032 (IL SLRB 1998) *aff’d* Chief Judge of Eighteenth Judicial Circuit v. Illinois State Labor Relations Bd., 311 Ill. App. 3d 808, 815 (2nd Dist. 2000).

“An element to be considered in determining an employee's managerial status is whether his policymaking role is advisory or subordinate since ‘it is the final responsibility and independent authority to establish and effectuate policy that determines managerial status under the Act.’” Cnty. of Cook, 351 Ill. App. 3d at 387-8 (quoting Village of Elk Grove Village, 245 Ill. App. 3d at 122 and City of Evanston, 227 Ill. App. 3d at 975); Dep’t of Cent. Mgmt. Servs /Dep’t of Healthcare & Family Servs., 388 Ill. App. 3d at 331. Nevertheless, under certain circumstances, an advisory employee who makes “effective recommendations” may also be managerial. ICC, 406 Ill. App. 3d at 775 (citing Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 339–40).

With respect to the second prong of the test, the employee must have “substantial discretion to determine how and to what extent policies will be implemented and [also] have the authority to oversee and direct that implementation.” Village of Elk Grove Village, 245 Ill. App. 3d at 122. It is not enough that an employee performs duties that are essential to an employer’s ability to accomplish its mission; rather, he “must possess the authority or responsibility to

or the public[,] and exercising authority to pledge an employer's credit.” State of Illinois, Department of Central Management Services, 21 PERI 205 (IL LRB-SP 2005).

determine the specific methods or means of how the employer's services will be provided." Dep't of Cent. Mgmt. Servs. (Health & Family Servs.), 388 Ill. App. 3d at 331.

a. Patient Access Quality Management Coordinator

The Coordinators are not managerial within the meaning of Section 3(j) of the Act.

The Coordinators do not formulate policy, they do not make recommendations on policy matters, and they are not involved in formulating the Employer's budget. Although the Coordinator job description contains some reference to policy-development functions, none of the Employer witnesses asserted that the Coordinators perform such work, and the Employer has not argued that they do so.

The Coordinators' responsibility to oversee their shift when the manager is absent is not an executive and management function. The Employer presented no evidence that the Coordinators thereby exercise authority and autonomy to establish department goals or the means of achieving goals on a broad scale, as is required of a manager. Cnty. of Cook, 351 Ill. App. 3d at 387-8. They simply perform quality control functions, which are largely dictated by the Employer's performance metrics. The Employer correctly notes that the Coordinator's role in promoting accurate registrations is essential to ensuring that the Employer can receive payment for the services it provides. However, "an individual is not a manager simply because he performs duties essential to the employer's ability to accomplish its mission." Eighteenth Judicial Circuit (Chief Judge), 14 PERI 2032 (quoted text) aff'd Chief Judge of Eighteenth Judicial Circuit, 311 Ill. App. 3d at 815; see also Dep't of Cent. Mgmt. Servs. (Health & Family Servs.), 388 Ill. App. 3d at 331-2.

The Coordinators are also not responsible for directing the effectuation of management policies and practices. As noted above, an employee satisfies the second part of the test when he has substantial discretion to determine *how* and to *what extent* policies will be implemented, as well as the authority to oversee and direct their implementation. Village of Elk Grove Village, 245 Ill. App. 3d at 122; City of Chicago (Mayor's Office of Information and Inquiry), 10 PERI ¶ 3003 n. 7.

Here, the Coordinators do not possess or exercise such substantial discretion when they ensure that their subordinates meet the Employer's performance metrics because they cannot

change those metrics or exercise any discretion as to when and how they apply. Village of Elk Grove Village, 245 Ill. App. 3d at 122.

Similarly, the Coordinators are not responsible for directing the effectuation of management policies and practices when they make recommendations on group training subjects, as the Employer claims. As a threshold matter, there is insufficient evidence that the Coordinators make effective recommendations on group training subjects. There is insufficient evidence concerning the frequency with which the Employer accepts the Coordinators' recommendations on group training topics. The Employer introduced several examples of group training it had conducted, but it did not identify which of those trainings (if any) originated from a Coordinator's recommendation.

In the alternative, the Coordinators' purportedly effective recommendations on such matters would not demonstrate that they are responsible for directing the effectuation of management policies and practices. "If an ostensibly advisory employee exercises managerial authority through his or her recommendations on major policy issues, which the superiors almost always accept, [the court] will look beyond the formal structure of the employee's participation in the enterprise, *i.e.*, the making of recommendations, and take account of the power that the employee actually wields." ICC, 406 Ill. App. 3d at 779. However, the Board has emphasized that not all effective recommendations are managerial in nature. State of Illinois, Department of Central Management Services (Department of Human Services), 28 PERI ¶ 126 (IL LRB-SP 2012). Here, the Coordinators do not, in fact, wield great power over the agency because their exercise of discretion is limited by the Employer's existing procedures, which they have no power to alter or disregard. Moreover, any recommendations the Coordinators may make do not concern "major policy issues" that guide future agency action on similar matters.

Finally, the Coordinators' authority is more limited than that of other individuals that the Board has found to be managerial based on their training-related functions. For example, the Board held that a director at the ICC was responsible for directing the effectuation of policies and practices where he was not only responsible for effectively recommending policies and procedures for the agency, but also for determining how to implement those procedures by training employees. Illinois, Department of Central Management Services (Illinois Commerce Commission), 30 PERI ¶ 206 (IL LRB-SP 2014) aff'd by Am. Fed'n of State, County & Mun. Employees, Council 31 v. State Dep't of Cent. Mgmt. Services (Illinois Commerce Comm'n),

2018 IL App (1st) 140656. Here, by contrast, there is insufficient evidence that the Coordinators provide training on the particular subjects they allegedly recommend, as training may be conducted by either the Coordinators or the Training Department. Even if they do conduct training on the topics they purportedly recommended, there is insufficient evidence in the record that the Coordinators have the authority to oversee the implementation of that training in a managerial capacity. Rather, the evidence suggests that Manager Greene likely has a heavy influence on the process because she routinely gives Coordinator Taylor detailed instructions about the information she must convey to her subordinates before meeting with them as a group.

Finally, the Coordinators' involvement in the disciplinary process does not demonstrate that they are responsible for directing the effectuation of management policies and practices. There is insufficient evidence from the record that the Coordinators determine *how* and to *what extent* the Employer's disciplinary policies will be implemented. Even if the Board were to determine that the Coordinators make effective recommendations on discipline, such a finding would be insufficient to support the conclusion that the Coordinators are thereby responsible for directing the effectuation of management policies and practices. At best, their role in this regard would be subordinate and advisory, and there is no evidence in the record that they have the authority to decline to report an infraction or enforce a policy. Sec'y of State, 2012 IL App (4th) 111075, ¶ 128, 131, 132 (rejecting claim of managerial status even though petitioned-for employees effectively recommended discipline of their subordinates with independent judgment).

Thus, the Coordinators are not managerial within the meaning of Section 3(j) of the Act.

b. Cashier Division Supervisor II

The CDS IIs are not managerial within the meaning of Section 3(j) of the Act.

The CDS IIs are not predominantly engaged in executive and management functions. The CDS IIs do not formulate policy, they do not make recommendations on policy matters, and they are not involved in formulating the Employer's budget.

The CDS IIs are also not responsible for running the Cashier Division in a managerial capacity. In ICC, the Court noted that a petitioned-for employee need not formulate policy to be engaged in executive and management functions, provided that the petitioned-for employee was otherwise responsible for running the agency. ICC, 406 Ill. App. 3d at 780. The Court reasoned

that a director of an agency who was the highest-ranking employee of the department might see no need to create any new policies, but would still be responsible for running the department in a managerial capacity. Id.

Here, however, the authority of the CDS IIs is dissimilar to the authority of a director, envisioned in the ICC Court's hypothetical. The CDS IIs may frequently be the top-ranked employee at their facility, but they do not exercise the broad discretion indicative of executive and management functions. Sec'y of State, 2012 IL App (4th) 111075, ¶ 130, 131. Rather they perform largely routine and clerical functions that are dictated by directives from their managers and professional norms. They document the cashiers' policy violations, at the direction of a manager, answer their subordinates' questions on computer-related issues and/or transactions, rotate cashiers to balance workload, and perform mathematical computations to complete deposit reports. Although these functions are undoubtedly necessary for the Employer to accomplish its mission, that is not enough to establish managerial authority. Sec'y of State, 2012 IL App (4th) 111075, ¶ 130, 131; Dep't of Cent. Mgmt. Servs. (Health & Family Servs.), 388 Ill. App. 3d at 332.

Next, the CDS IIs are not responsible for directing the effectuation of management policies and practices. There is insufficient evidence that the CDS IIs are responsible for developing the means and methods of achieving policy objectives or determining the extent to which those objectives will be achieved. There is similarly insufficient evidence that the CDS IIs are empowered with a substantial amount of discretion to determine how policies will be effected. Dep't of Cent. Mgmt. Services/Dep't of Healthcare & Family Services, 388 Ill. App. 3d at 332. The CDS IIs do not formulate policies for the Employer, and they do not have the authority to decline to enforce the Employer's policies. Sec'y of State, 2012 IL App (4th) 111075, ¶ 132 (relying on this rationale in finding that petitioned-for employees did not meet the second prong of the managerial test).

Thus, the CDS IIs are not managerial within the meaning of Section 3(j) of the Act.

V. CONCLUSIONS OF LAW

1. The Patient Access Quality Management Coordinators are not supervisors within the meaning of Section 3(r) of the Act.
2. The Cashier Division Supervisor IIs are not supervisors within the meaning of Section 3(r) of the Act.
3. The Patient Access Quality Management Coordinators are not managerial within the meaning of Section 3(j) of the Act.
4. The Cashier Division Supervisor IIs are not managerial within the meaning of Section 3(j) 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 Patient Access Quality Management Coordinator and Cashier Division Supervisor II are to be added to the existing AFSCME-represented Health Facility Unit.

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

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may

include cross-exceptions to any portion of the recommendation. Within five days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, to either the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. Exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 13th day of September, 2019

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

/S/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**