STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

American Federation of State, County, And Municipal Employees, Council 31,	)	
Petitioner,	)	
	)	Case No. L-RC-19-035
and	)	
City of Chicago,	)	
Employer.	)	

ORDER

On January 9, 2020, 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 June 18, 2020 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 18th of June 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

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

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner/Labor Organization,	)	
and	)	Case No. L-RC-19-035
City of Chicago,	)	
Employer.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On June 26, 2019, 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 Staff Assistant – Excluded, employed by the City of Chicago (City or Employer) in its Department of Business Affairs and Consumer Protection (BACP) to the existing AFSCME-represented Unit 1. The Employer opposed the petition, asserting that the employee sought to be represented is excluded from coverage of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, pursuant to the exemption for supervisory employees. In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on September 13, 2019. Both parties elected to file post-hearing briefs.

I. PRELIMINARY FINDINGS

The parties stipulate and I find:

1. The City of Chicago (City) is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act (Act).
2. The City operates the Department of Business Affairs and Consumer Protection.
3. The City is a unit of local government subject to the jurisdiction of the Board's Local Panel pursuant to Section 5(b) of the Act.

4. The American Federation of State, County and Municipal Employees, Council 31 (Union) is a labor organization within the meaning of Section 3(i) of the Act.
5. On June 26, 2019, the Union filed a representation petition seeking to represent the title of Staff Assistant – Excluded, BACP, for the purpose of collective bargaining.
6. There is currently one Staff Assistant – Excluded position in the City of Chicago's BACP.
7. Bettina Johnson serves as the Staff Assistant – Excluded in BACP.
8. Ms. Johnson previously held the title of Administrative Assistant III – Excluded, until her position was reclassified, effective March 1, 2019.
9. Ms. Johnson is supervised by Program Manager Monique Davids.
10. On July 22, 2019, the City filed its objections to the Union's representation petition, objecting to the inclusion of the Staff Assistant – Excluded, BACP, position within the bargaining unit as a "supervisory employee" under Section 3(r) of the Act.

II. ISSUES AND CONTENTIONS

The issue is whether the Staff Assistant position, held by Bettina Johnson, is supervisory within the meaning of Section 3(r) of the Act.

The Employer asserts that Johnson is a supervisor within the meaning of the Act. The Employer contends that Johnson performs principal work that is substantially different from her subordinates. It further asserts that she has authority to direct and discipline her subordinates with independent judgment, or effectively recommend the same, and has authority to hire staff. The Employer further asserts that she spends a preponderance of her work time exercising supervisory authority. In the alternative, the Employer asserts that the petition must be dismissed because the Union has not demonstrated majority support in an appropriate unit. It asserts that there are ten employees in eight different departments throughout the City who hold Johnson's title, but notes that the Union has only sought to add one of them to the unit.

The Union asserts that Johnson is a public employee and not a supervisor. It argues that Johnson's principle work is not visibly different from that of her subordinates. The Union further asserts that Johnson does not exercise any indicia of supervisory authority with the requisite independent judgment. The Union contends that Johnson does not possess any actual authority to discipline her subordinates. It further asserts that she does not direct, reward, or hire

with independent judgment. The Union concludes that Johnson does not spend a preponderance of her work time exercising supervisory authority.

III. FACTS

Rupal Bapat is the Deputy Commissioner of the Department of Business Affairs and Consumer Protection (BACP). She oversees Monique Davids, a program director for BACP's Public Vehicle Operations Division, which licenses all public vehicle licensees. Approximately 20 employees work in the division.[1]

The Public Vehicle Operations Division is comprised of two units, public chauffeur licensing and public vehicle licensing. Davids oversees staff assistant Bettina Johnson, the petitioned-for employee, who works in the public vehicle licensing unit. Johnson has held the title of Staff Assistant – Excluded since March 2019. She previously held the title Administrative Assistant III – Excluded. The Department changed Johnson's title because the title Administrative Assistant III – Excluded was not representative of Johnson's day-to-day functions. However, Johnson's job duties did not change when her title changed. Johnson oversees five Administrative Assistant IIs (AA IIs). The AA IIs are represented by the Union.

The public chauffeur licensing and public vehicle licensing units are located on different sides of the office, which are separated by a lobby. Davids office is on the public chauffeur licensing side. Johnson's office is on the public vehicle licensing side. The AA IIs sit in cubicles outside Johnson's office.

The public vehicle licensing unit licenses approximately nine different types of public vehicles, including taxies, liveries, charter buses, and horse-drawn carriages. Each license has a separate application and renewal process. This section also handles modifications to the licenses, when requested.

The AA IIs take walk-in clients, they review applications submitted by license applicants, and they address issues presented by license holders related to their licenses.

After an individual submits an application, the AA IIs review the application using a checklist to ensure that it includes all the required documentation. They also check the computer system to ensure that the applicant has passed the fingerprint screening. They then attach a cover sheet and provide the application to Johnson for review and approval. AA IIs do not have

[1] This figure does not include the employees who work at the inspection facility.

authority to approve the applications. When AA IIs receive calls from customers asking questions, they transfer them all to Johnson.

Johnson reviews the AA II's applications for completeness and approves or denies application requests.[2] She responds to phone calls and emails she receives from licensees. She handles applications for licenses that her subordinates do not handle. These include affiliation applications, manager applications, broker applications, and radio dispatch applications. She also handles renewals for certain types of applications including horse-drawn carriage licenses, boat licenses, and ambulance licenses, which her subordinates do not handle. Davids testified that Johnson spends approximately 10 to 50 percent of her time performing licensing tasks that the AA IIs cannot perform, depending on the season. Johnson also performs the intake duties of the AA IIs if the section is understaffed, but does so for only 5 to 10 percent of her work time.

1. Direction

a. Oversight Monitoring

Johnson ensures that all employees are present. Davids testified that Johnson ensures that the AA IIs comply with BACP policies and procedures. However, she did not explain how Johnson performs this function.

Davids testified that if the AA IIs have a problem, they go to Johnson for help. For example, if the computer system is malfunctioning, Johnson is responsible for contacting the contractor to fix that issue. If she is aware of a workaround, she helps the staff perform that function.

Johnson and the other staff members train new AA IIs on the work and the Department's procedures. Johnson does not need approval from Davids to perform such training.

b. Review

Johnson reviews license applications submitted to her by the AA IIs. She reviews the application for completeness. She ensures that the application includes the fingerprint background check and that the applicant has submitted all the required documents. She serves as a second set of eyes on the application. She also verifies whether the AA II has accurately

[2] Johnson does not have authority to deny applications if there is something amiss with the information provided by the applicant. In such cases, she provides the application to Davids or the Deputy Commissioner.

completed the checklist. If the AA II incorrectly notes that the application is complete, Johnson notes that on the cover sheet, which she provides to the AA II. If the application is complete, she approves issuance of the license.

Johnson spends approximately 20 to 25 percent of her time reviewing the work of the AA IIs.

c. Assignment / Scheduling

Johnson ensures that the AA IIs process the Department's clients in a timely fashion by observing the queuing system, where licensees check in. If the AA IIs are not processing applicants in a timely fashion, Johnson steps in to take clients. Alternatively, she may rearrange assignments for the day to ensure that the Department services clients in a timely manner. She thereby handles the day to day operations of the unit.

Davids testified that Johnson passes out the daily assignments to the AA IIs. Although Johnson stated that she does "not really assign work," she conceded that Davids sometimes brings assignments to her attention and asks her to perform the work or to delegate the work to an AA II. Johnson conceded that she makes such assignments, but noted that she does not make them on a daily basis. Davids occasionally assigns work directly to the AA IIs, but more frequently provides the work to Johnson, who determines which AA II should perform the work.

The Department maintains a calendar in an excel spreadsheet. Staff assistant Marsha Chism compiles the spreadsheet based on information she receives from other sources. The Deputy Commissioner forwards information concerning leave requests to Chism, so she can include them in the schedule. Chism notes who is scheduled to be off, who is scheduled to be working the front desk, and who is scheduled to be working at the camera.

Johnson denied that she is involved in the scheduling process and denied that she provided any information to Chism to use in schedule spreadsheet. However, Davids asserted that Johnson assigns AA IIs to the front desk and noted that Johnson is responsible for coverage. It is undisputed that employees rotate through the camera assignment.

According to Davids, Johnson spends approximately 20% of her time each day assigning work.

d. Time off

Johnson recommends approval of vacation and other leave requests for her subordinates. One of Johnson's superiors must also sign the leave request form before it is final. All of the leave request forms in the record, signed by Johnson, are also signed by Deputy Commissioner Bapat.

Johnson recommends granting all requests for time off, unless a superior directs her otherwise. In one case, Deputy Commissioner Bapat directed Johnson to deny an AA II's leave request, which fell during the holiday season, because she (Bapat) believed that the section would not have sufficient staffing if the request were granted. Deputy Commissioner Bapat directed Johnson to document this rationale on the leave request form, and Johnson did so. Deputy Commissioner Bapat then countersigned the form. The AA II later objected to the denial of leave and raised her objection directly with the Deputy Commissioner. Deputy Commissioner Bapat then reversed her initial denial and approved the leave request.

Davids testified that Johnson considers the volume of client traffic and existing staffing levels to determine whether to recommend granting or denying a leave request. However, this testimony is outweighed by Johnson's description of her general practices, and the specific testimony explaining the sole instance in which she recommended denial of the leave request.

e. Evaluations

Davids drafts performance evaluations for the AA IIs every six months. She asks Johnson for her input. Davids testified that she relies heavily on Johnson's input because Johnson can observe how the AA IIs perform, whereas Davids does not oversee their day to day work. She further explained it would be hard for her to complete the AA IIs' performance evaluations on her own because she would have difficulty determining how well the AA IIs were meeting expectations. Davids discusses the evaluation with Johnson during the drafting process. Johnson reviews Davids's evaluations and provides comments and suggestions. Johnson explained that her comments ensure that the evaluations reference all the duties for which the AA IIs are responsible. She may also note whether the AA II has "learned [an] ordinance" or whether, instead, the learning process is an "ongoing task" for that AA II. However, Johnson does not set the job duties of the AAI IIs or establish performance expectations for them.

Both Davids and Johnson signed the evaluations presented into evidence. Both Davids and Johnson meet with the employee to provide the employee with the evaluation. Davids stated that her signature was probably not required on the evaluation; however, the preponderance of the evidence demonstrates that Johnson does not have authority to draft an evaluation on her own. The position description questionnaire completed by Davids for Johnson's position states that Johnson's responsibility with respect to performance evaluations is to merely "assist" her supervisor in completing evaluations. In addition, Johnson has never drafted a performance evaluation.

The record contains no evidence as to whether the evaluations have an impact on employees' wages. The Department issues salary/step increases to its employees and has never denied an employee's step increase. The Department receives the salary increase form from an individual within the Department who works on human resources. The form includes a comment section. Davids or the Deputy Commissioner complete the comment section to explain why the employee should receive a salary increase. Johnson signs the form after her superiors complete the comment section, which explains why the employee should receive the increase. Either Deputy Commissioner Bapat or Davids must also sign the form.[3]

During the two weeks per year during which the Department completes performance evaluations, Johnson spends approximately 10% of her time discussing the evaluations with Davids.

The Department has placed some employees on performance improvement plans. The Department places employees on performance improvement plans when the employees' job performance is below minimally acceptable standards. It provides the employee with 30 days to correct specific behaviors related to poor performance. At the close of the 30-day period, the Department determines if the employee has met the requirements of the plan. The performance improvement plan document states the following: "Failure to improve performance [by the] described date may result in the pursuit of disciplinary action."

[3] Davids testified that she has never disagreed with Johnson's decision on whether to approve salary increments, but did not offer any rebuttal to Johnson's assertion that before she receives and signs the form, a member of management has already completed the comments section explaining why the increase should be approved.

Davids testified that Johnson has authority to place AA IIs on performance improvement plans. Davids further stated that she has never disagreed with Johnson's decision to place an AA II on a performance improvement plan. Davids speaks to Johnson to determine whether the employee is complying with the performance improvement plan. Davids testified that Johnson plays a key part in determining whether employees are meeting the plan's requirements. Davids has never disagreed with Johnson's decision to terminate or complete a performance improvement plan. The Department requires two superiors to sign a performance improvement plan at its completion.

The record contains two performance improvement plans. The preponderance of the evidence demonstrates that Davids unilaterally initiated the first performance improvement plan because she was the only individual who signed it on its effective date (August 21, 2015). Davids noted that the employee in question had a 25% tardy rate and was taking unpaid leaves. The plan required the employee to have no unexcused absences or late swipes. Both Davids and Johnson signed the plan at its conclusion to note that the employee had satisfied the plan's requirements. Both Davids and Johnson signed the second performance improvement plan at its initiation. They noted that the employee had made a number of errors in renewing and processing license applications. The performance improvement plan required the employee to pay greater attention to detail when performing her job functions. The Department extended the performance improvement plan. Johnson and Deputy Commissioner Bapat signed the plan at its conclusion, noting that the employee had satisfied its requirements. There is no evidence in the record that any employee has received discipline for failure to adequately complete a performance improvement plan.

2. Discipline

Discipline within the Department is rare. In the past ten years, the Department has imposed discipline on only two employees. In one case, approximately two to five years ago, the Department terminated an AA II's employment. More recently, the Department issued an AA II a written reprimand for misplacing documentation. Johnson testified that she did not participate in either disciplinary decision. This is consistent with Davids' testimony. Davids confirmed that Johnson was not involved in the most recent disciplinary action. She noted that she could not

recall whether Johnson was involved in the earlier disciplinary issue, but noted that Johnson was not present at the disciplinary meeting involving that employee.

Davids testified that Johnson has authority to initiate formal disciplinary proceedings for the AA IIs and testified that she does not expect Johnson to consult with her before issuing discipline. However, Johnson did not receive training to impose discipline. Davids attended a training to learn how to impose formal discipline. Davids asked if Johnson could also attend the training, but the individual conducting the training stated there was no room for her. There is no indication from the record that Davids conveyed what she learned to Johnson.

In cases where the Department decides to issue discipline, the Deputy Commissioner and Program Manager Davids jointly determine the appropriate level of discipline. Davids asserted that Johnson also participates in the decision-making process concerning the level of discipline, but the preponderance of the evidence does not support this assertion. It is inconsistent with Johnson's testimony that she lacked involvement in either of the Department's disciplinary actions. It is also inconsistent with Davids's assertion that Johnson did not participate in the most recent disciplinary action and that she did not appear in the disciplinary meeting for the earlier disciplinary action.

3. Hiring

Johnson helped interview candidates for an AA II position. She served on the interview panel with Davids, her supervisor. The Department interviewed four to five candidates. Johnson did not choose the candidates selected for an interview or draft the questions for the interview. Rather, Deputy Commissioner Bapat selected questions and provided them to Johnson and Davids. Davids and Johnson took turns asking the questions and took notes on the answers.

Johnson also participated in a consensus meeting. The consensus meeting included Davids, Johnson, Supervisor of Personnel Services Tamara Harding, and Craig Coulter, who works for the Department of Human Resources. Johnson and Davids both made recommendations at the consensus meeting. Davids testified that she values Johnson's recommendation in hiring.

In one case, Johnson and Davids disagreed over a candidate's suitability. Johnson thought the candidate was good while Davids did not. The Department did not hire that candidate. The Department ultimately hired two of the five candidates.

IV. DISCUSSION AND ANALYSIS

1. Supervisory Exclusion

Bettina Johnson is not a supervisor within the meaning of Section 3(r) of the Act.

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

The first paragraph of Section 3(r) defines the term supervisor and sets forth a four-part test for establishing supervisory status in non-peace officer employment. Under that test, individuals are supervisors if they (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, (3) consistently use independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. 5 ILCS 315/3(r); City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 512 (1990).

In a representation case, the party that seeks to exclude an individual or job classification from a proposed bargaining unit via a statutory exclusion has the burden of proving that exclusion by a preponderance of the evidence. 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) Principal Work

Johnson satisfies 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, Johnson's principal work is obviously and visibly different from that of her subordinates, the Administrative Assistant IIs (AA IIs). Johnson's principal work is to review the work of her subordinates for completeness and to approve license application requests. Her principle work also requires her to handle affiliation applications, manager applications, broker applications, radio dispatch applications, and applications for horse drawn carriage licenses, boat licenses, and ambulance licenses. By contrast, the AA IIs' principal work is to perform intake of applications and to check licensing applications for completeness. The AA IIs do not review the work of other AA IIs, they do not approve applications, and they do not handle the applications handled by Johnson, listed above. Although Johnson sometimes performs the intake duties performed by the AA IIs, she does so infrequently, only when the section understaffed. 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 as their subordinates only when necessary).

2) Supervisory Indicia and Independent Judgment

Johnson does not exercise any indicia of supervisory authority with the requisite independent judgment.

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

Moreover, the alleged supervisor must exercise his independent judgment in the "interest of the employer." In City of Freeport, the Court held that decisions made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge do not require the petitioned-for employee to exercise independent judgment "in the interest of the employer." City of Freeport, 135 Ill. 2d at 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).

i. Direction

Johnson does not direct her subordinates with the requisite independent judgment.

The term "direct" encompasses several distinct but related functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. County of Lake, 16 PERI ¶ 2036; County of Cook, 16 PERI ¶3009 (IL LLRB 1999), County of Cook, 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, 396-97 (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.

Johnson does not direct with independent judgment when she reviews her subordinates work. Johnson checks her subordinates' work for completeness, which does not require the exercise of independent judgment. County of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-LP 2015). She also acts as a second set of eyes on an application, for purposes of quality control, to ensure that the AA IIs have collected all the required information. However, the Employer has a preestablished list of documents that each application must contain, and Johnson does not exercise independent judgment in determining whether the AA IIs have accurately checked for the documents on that list. Flagg Rochelle Park District, 20 PERI ¶ 75 (IL LRB-SP 2004); County of Cook, Office of the Medical Examiner, 6 PERI ¶ 3011 (IL LLRB 1990).

Johnson does not direct with independent judgment when she helps AA IIs navigate computer-related errors because she simply provides objective factual information about computer use. 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 consistent exercise of independent judgment).

There is insufficient evidence that Johnson directs with independent judgment when she ensures that the AA IIs comply with the Department's policies and procedures. The Employer did not introduce any of its policies/procedures or explain how Johnson ensures that the AA IIs follow them on a daily basis. Accordingly, it is impossible to determine whether Johnson's activities require her to choose between two or more significant courses of action.

There is insufficient evidence that Johnson directs her subordinates with independent judgment when she assigns them work. A purported supervisor exercises independent judgment in making assignments when she considers discretionary factors such as her 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 a rotation system does not require independent judgment. Cnty. of Vermillion, 18 PERI ¶ 2050 (IL LRB-SP 2002).

The preponderance of the evidence demonstrates that Johnson passes out daily tasks to balance the workload to ensure that the Department services clients in a timely manner. Although Johnson also distributes work provided to her by Davids, there is no evidence in the record that explains how she determines which AA II will receive the assignment.

The witnesses dispute the extent to which Johnson assigns AA IIs to different locations such as the front desk and the camera. Assuming Johnson in fact makes such assignments, there is insufficient evidence that she exercises independent judgment where the record does not reveal the basis for her decisions. Village of Bolingbrook, 19 PERI ¶ 125 n. 10; City of Chicago, (Dep't of Public Health), 17 PERI ¶ 3016 n. 3. Moreover, assignments to the camera location do not require the exercise of independent judgment because employees rotate through that assignment. Cnty. of Vermillion, 18 PERI ¶ 2050.

Next, Johnson does not exercise independent judgment when she recommends approval of leave requests. 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 (decisions based on seniority and predetermined staffing requirements); Village of Morton Grove, 23 PERI ¶ 72 (IL SLRB 2007) (decisions based on minimum manpower requirements). Likewise, approval of leave requests is a clerical function where the petitioned-for employee routinely approves them. Chief Judge of the Circuit Court of Cook County, 6 PERI ¶ 2045 (IL SLRB 1990) aff'd Chief Judge of Circuit Court of Cook County v. Am. Fed'n of State, County, & Mun. Employees, Council 31, AFL-CIO, 218 Ill. App. 3d 682, 714 (1st Dist. 1991), aff'd, 153 Ill. 2d 508 (1992); see also Village of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003) (addressing unplanned overtime, noting that approval of all requests was evidence of a routine, ministerial function).

Here, Johnson does not exercise independent judgment in recommending the approval or denial of such requests because she routinely recommends approval of all such requests. Although Johnson's signature appears on one denial of a leave request, in that case, the Deputy Commissioner directed her to deny the request and told her to what to write on the form—that the denial was due to operational need.

Johnson does not direct with independent judgment when she provides input on the evaluation of her non-probationary subordinates. When an individual's authority is exercised in conjunction with a second individual, with their decisions and recommendations made jointly, it lacks the requisite independent judgment. City of Naperville, 20 PERI ¶ 184; City of Chicago (Chicago Public Library), 10 PERI ¶ 3016 (IL LLRB 1994) (citing County of Knox and Knox County Sheriff, 7 PERI ¶ 2002 (IL SLRB 1990)); but see, State of Illinois, Department of Central Management Services, 25 PERI ¶ 184 n. 10 (IL LRB-SP 2009) (mere fact that supervisor signed off on evaluation is insufficient evidence that evaluations were a collaborative effort). Indeed, the Board has repeatedly held that decisions made by consensus, particularly those impacted by a superior's influence, are not indicative of supervisory authority. Peoria Housing Authority, 10 PERI ¶ 2020 (decisions made by consensus are not independent); State of Illinois, Department of Central Management Services, 8 PERI ¶ 2037 n. 2 (considering influence of superior when determining whether recommendations exhibited the requisite independent judgment).

Here, the evaluations are a collaborative effort between Johnson and her superior, Manager Davids, and therefore do not demonstrate Johnson's independent judgement. Davids drafts the evaluation and Johnson offers her comments during the drafting process. While Davids may value Johnson's input, and may find it useful in formulating the commentary, they work on the evaluation together, and the collaborative nature of the evaluation process precludes a finding that Johnson exercises independent judgment.

Notably, the evaluation process here is distinguishable from the disciplinary process described in Department of Central Management Services, cited by the Employer as analogous on brief. Dep't of Cent. Mgmt. Services, 2011 IL App (4th) 090966, ¶ 193. There, the court held that a superior's involvement in the subordinates' recommendation for discipline did not remove independent judgment. Id. However, in that case, petitioned-for employee elected to involve her superior in the decision-making process and effectively exercised independent judgment in

choosing the extent of the superior's involvement. Id. Here, by contrast, Johnson has no discretion as to whether to involve her boss in the decision-making process. Indeed, she does not even produce a recommended draft evaluation for Davids' review and approval. Rather, it is Manager Davids who drafts the evaluation and exercises discretion in determining the extent of Johnson's involvement. Although Davids does not have daily interaction with the AA IIs, she has enough contact with them to formulate an opinion on their work because she has assigned them work, disciplined them, and placed one of them on a performance improvement plan, all without Johnson's involvement. Cf. Dep't of Cent. Mgmt. Services, 2011 IL App (4th) 090966, ¶ 193.

There is no merit to the Employer's suggestion that Johnson has authority to complete the evaluations on her own. The position description questionnaire indicates that Johnson merely assists in evaluating the AA IIs. Although Davids testified that she "probably does not need to sign" the evaluation, there is no evaluation on which her name does not appear, and the Employer identified no evaluation that Johnson drafted.

Even if the Board determines that Johnson makes effective recommendations on non-probationary employees' evaluations, such authority is not evidence of the supervisory authority to direct because there is insufficient evidence that the evaluations 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, however, there is no indication the Employer denies employees step increases or issues discipline based on a poor evaluation. Although the Department issues step increases to its employees, the Employer failed to explain the connection (if any) between evaluations and step increases.[4] 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 an increase based on a negative overall rating).

[4] The Employer has not alleged that Johnson exercises authority to reward her subordinates by approving step increases. However, any such contention must be rejected because Johnson exercises no independent judgment and merely signs the approval form after her superiors express to her the justification for the increase.

Likewise, the Employer does not issue discipline as a result of a poor evaluation. Rather, the Employer may institute a performance improvement plan, at Johnson's recommendation, but a performance improvement plan is not itself disciplinary. It simply cautions that "failure to improve performance…***may*** result in the pursuit of disciplinary action." Notably, there is no evidence that Johnson has ever made a disciplinary recommendation based on an employee's poor performance, and as discussed more fully below, Johnson lacks disciplinary authority. State of Illinois, Department of Central Management Services, 26 PERI ¶ 39 (IL LRB-SP 2010) (rejecting similar argument pertaining to corrective action plans).

In turn, Johnson's authority to effectively recommend and maintain employees on performance improvement plans, does not itself constitute supervisory authority to direct, where those plans do not impact employees' terms and conditions of employment. City of Chicago, 26 PERI ¶ 114 (IL LRB-LP 2010) (ALJ applied similar analysis to staff assistant's authority to place employees on performance improvement plans; Board adopted ALJ's analysis).

Next, Johnson does not direct with independent judgment when she helps evaluate her probationary subordinates and recommends their continued employment. The completion of these evaluations, like the evaluations of non-probationary employees, is a collaborative effort between Johnson and Manager Davids, which diminishes the independence of Johnson's assessment. See cases supra. Davids and Johnson each sign statements expressing their recommendation to continue the probationary employees' employment. However, the evaluation lists them as joint supervisors and the witnesses' description of the evaluation process, discussed above, demonstrates that Davids is responsible for quantifying the information provided to her by Johnson about the employees' performance.

ii. Discipline

Johnson does not effectively recommend the discipline of her subordinates with independent judgment.

To constitute discipline within the meaning of the Act, reprimands must have an impact on an employee's job status or terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶ 125 (IL SLRB 2003). Documented verbal reprimands constitute supervisory authority to discipline if 1) the individual has the discretion or judgment to decide whether to issue such a reprimand, 2) the reprimand is documented, and 3) the reprimand can serve as the basis for

future disciplinary action, that is, it functions as part of a progressive disciplinary system. Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469, 478 (2nd Dist. 2005); Village of Hinsdale, 22 PERI ¶ 176 (IL 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).

Johnson does not have authority to make effective recommendations on disciplinary matters. Johnson has never recommended discipline and it is therefore impossible to determine whether such recommendations would be effective or whether they would require the consistent use of independent judgment. Vill. of Elk Grove Village, 8 PERI ¶ 2015 (IL SLRB 1992) (Board could not assess effectiveness of petitioned-for employee's recommendation where no recommendation had ever been made; addressing written reprimands).

Moreover, the preponderance of the evidence demonstrates that the responsibility to discipline the AA IIs falls to others, not Johnson. The Employer disciplined two AA IIs during Johnson's tenure, but Johnson had no involvement in either disciplinary action. Rather, Manager Davids and Deputy Commissioner Bapat made the disciplinary decisions.

The Employer's failure to train Johnson on how to impose or recommend discipline likewise supports the finding that she lacks disciplinary authority. The failure to instruct employees as to how to exercise supervisory authority, particularly where it is rarely exercised, demonstrates that they do not have that authority. State of Illinois, Department of Central Management Services, 21 PERI ¶ 46 (IL LRB-SP 2005); County of Kane and Kane County Sheriff, 2 PERI ¶ 2048 (IL SLRB 1986). Here, although the Employer conducted disciplinary training, it did not send Johnson to attend. Only Davids attended that training, and there is no evidence in the record that Davids transmitted her knowledge to Johnson.

Finally, Johnson's authority is easily distinguishable from the authority of the employees at issue in Village of Hazel Crest and Department of Cent Management Services, cited by the Employer on brief. In both those cases, the petitioned-for employees exercised authority to recommend disciplinary action, and the court's analysis focused on whether the recommendations were effective or, alternatively, whether the petitioned-for employees exercised independent judgment. Vill. of Hazel Crest v. Ill. Labor Rel. Board, 385 Ill. App. 3d 109, 114 & 118 (1st Dist. 2008); Dep't of Cent. Mgmt. Services v. Illinois Labor Relations Bd., State Panel, 2011 IL App (4th) 090966, ¶ 193. Here, by contrast, Johnson has never made a

disciplinary recommendation and there is no job description or general order that expressly confers authority upon her to do so. Although Davids testified that Johnson has authority to initiate discipline, the position description questionnaire completed by Davids on Johnson's behalf does not reference disciplinary authority. Moreover, the Employer in this case, unlike the employers in the cited cases, effectively excluded Johnson from the disciplinary process by declining to train her in disciplinary matters and repeatedly imposing discipline against her subordinates (the AA IIs) without her involvement.

While Davids offered testimony concerning Johnson's theoretical authority to make effective recommendations on discipline, Johnson does not exercise such authority in practice, as discussed above. Vill. of Broadview v. Ill. Labor Rel. Bd, 402 Ill. App. 3d 503, 508 (1st Dist. 2010) (theorical authority to suspend not sufficient to exclude sergeants as supervisors where sergeants had never issued such suspensions); see also Ill. Dep't of Cent. Mgmt. Serves. v. Ill. Labor Rel. Bd., State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (Board could reasonably rely on authority that petitioned-for employees exercised in practice).

iii. Discharge[5]

Johnson does not have the authority to effectively recommend the discharge of probationary employees with the requisite independent judgment. The Board has held that the effective authority to recommend whether probationary employees are terminated at the end of the probationary period constitutes the ability to recommend discharge. State of Ill. Dept' of Cent. Mgmt. Servs., 12 PERI ¶ 2024 (IL SLRB 1996). Here Johnson makes recommendations at the close of an employee's probationary period regarding whether a probationary employee should be terminated before certification. However, she does not exercise independent judgment in assessing the employee's performance because she completes the evaluation in collaboration with her superior, Manager Davids. In addition, there insufficient evidence that Johnson has authority to effectively recommend the discharge of a probationary employee because there is no indication that she has ever made such a recommendation. State of Ill. Dep't of Cent. Mgmt. Servs., 12 PERI ¶ 2024. Accordingly, there is no indication that such a recommendation would be adopted as a matter of course with little if any independent review. Id.

[5] The Employer did not expressly argue that this indicia was a basis for exclusion, but presented some evidence and argument relevant to its analysis. Accordingly, it is considered here.

iv. Hiring

Johnson does not exercise independent judgment or make effective recommendations on hiring. Decisions reached by consensus or committee are not considered supervisory within the meaning of the Act because they lack the requisite independent judgment. State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Rev.), 29 PERI ¶ 62 (IL LRB-SP 2012); State of Illinois, Department of Central Management Services, 25 PERI ¶ 184 (IL LRB-SP 2009); Village of Bolingbrook, 19 PERI ¶ 125 n. 13 (IL LRB-SP 2003); City of Chicago (Chicago Public Library), 10 PERI ¶3016 (IL LLRB 1994); see also County of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-LP 2015) (noting that group decision was not independent). Moreover, where an individual participates in a committee that includes her superiors, her recommendations are not effective within the meaning of the Act. Vill. of Downers Grove, 6 PERI ¶ 2035 (IL SLRB 1990), aff'd 221 Ill. App. 3d 47, 581 N.E.2d 824, 8 PERI ¶ 4002 (1991); Village of Bolingbrook, 19 PERI ¶ 125 n. 13 (IL LRB-SP 2003) (addressing transfer); County of Lake, 16 PERI ¶ 2036 (addressing promotion). Here, the Employer makes its hiring decisions by consensus in a meeting that includes four individuals, one of whom is Manager Davids, Johnson's supervisor. Thus, Johnson's recommendations on hiring are neither independent nor effective.

Even if the structure of the hiring process did not preclude a finding of supervisory authority (it does), the evidence demonstrates that Johnson's recommendations are not in fact accepted as a matter of course with little, if any, independent review. Village of Justice, 17 PERI ¶ 2007 (IL LRB SP 2000) (articulating standard); Peoria Housing Authority, 10 PERI ¶ 2020 (IL SLRB 1994), aff'd by unpub. order, No. 3-90317 (1995); Chicago Park District, 9 PERI ¶ 3007 n. 3 (IL LLRB 1993). As noted above, Johnson's superior, Davids, independently reviews each of the candidates. Moreover, Davids overrode Johnson's preferences on hiring in at least one of the two cases in which the Employer hired employees. Whatever alleged value Davids places on Johnson's opinion, such value does not confer supervisory authority to make effective recommendations on hiring.

3) Preponderance

Johnson does not spend a preponderance of her 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 315/3(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 at 86. The employer must provide details with respect to the amount of time the purported supervisor spends engaged in supervisory functions or the significance of these functions. Sec'y of State v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 111075, ¶ 108-116.

Here, Johnson does not spend a preponderance of her work time exercising supervisory authority because she does 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, Johnson does not direct, discipline, discharge, or hire, with the requisite independent judgment, or effectively recommend the same. 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, Johnson is not a supervisor within the meaning of Section 3(r) of the Act.

2. Appropriateness of the Proposed Unit

The unit proposed by the Union is appropriate even though it omits some employees in the staff assistant title who remain excluded from the unit.

The Union had a reasonable basis on which to decline to seek representation of the other staff assistant positions, still excluded from the bargaining unit, because the parties previously agreed to exclude them as confidential or supervisory. The Board has a well-established practice of holding parties to their stipulations regarding bargaining unit inclusions and exclusions where the parties' stipulations identify the reason for the exclusions. City of Chicago, 33 PERI ¶ 45 (IL LRB-LP 2016) (collecting cases). Here, the parties reached agreement regarding the status of fifteen staff assistants in 2010, when the Union petitioned to represent the staff assistant classification, a group of approximately 225 positions. See City of Chicago, 26 PERI ¶ 114 n. 3. The parties expressed the reasons for the exclusions, asserting that 12 staff assistants were confidential and three were supervisory. Id. The Union's failure to petition for these employees is therefore reasonable because there is no indication that the Employer has released the Union from its agreement, and the Union has expressed no interest in challenging its validity here.

Even if the Board determines that there are some excluded staff assistants, apart from Johnson, who are not covered by the parties' earlier agreement, I recommend that the Board nevertheless find that the proposed unit is appropriate. The Employer has already consented to split the unit-placement of the staff assistant classification, including some staff assistants in the bargaining unit while excluding others based on their differing duties and authority.[6] ALJs have held that such bargaining practices by the Employer nullify the presumption of inappropriateness, and I recommend that the Board adopt that earlier analysis. City of Chicago, 35 PERI ¶ 127 (IL LRB-LP ALJ 2019); City of Chicago, L-RC-20-002.[7]

3. Question of Majority Support

The Union has obtained majority support in the petitioned-for group of one. When a union seeks to add positions to an existing unit, there is no question of representation in the existing unit. There is only a question of representation among the employees sought to be

[6] City of Chicago, 26 PERI ¶ 114 (declining to object to the inclusion of 179 staff assistants, agreeing to exclude 15 staff assistants, and litigating the unit placement of the rest).

[7] No party filed exceptions to this decision, and the Board issued an oral ruling finalizing it on January 9, 2020.

added. Dupage Area Vocational Educ. Auth. v. State Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 939 (4th Dist. 1988) (addressing similar procedure arising under the Illinois Educational Labor Relations Act). In such cases, the Board considers whether there is sufficient support for the union among the employees that the union seeks to add. Ill. Dep't of Cent. Mgmt. Servs. (Dep ' t of Children and Family Services), 8 PERI ¶ 2037 (IL SLRB 1992) (ALJ found that "there [was] nothing inappropriate in adding employees to an existing unit through a representation petition"; Board affirmed and directed election in petitioned-for group). Here, the petition has majority support.

V. CONCLUSIONS OF LAW

1. Staff Assistant-Excluded Bettina Johnson is not a supervisor within the meaning of Section 3(r) of the Act.
2. The proposed unit is appropriate.
3. The petition has majority support.

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 Staff Assistant – Excluded position within the Department of Business Affairs and Consumer Protection (BACP), held by Bettina Johnson, is to be added to the existing AFSCME-represented Unit 1.

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 9th day of January, 2020

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge