

ILLINOIS OFFICIAL REPORTS
Appellate Court

***Department of Central Management Services/Department of Transportation v. Illinois
Labor Relations Board, State Panel, 2013 IL App (4th) 110825***

Appellate Court
Caption

THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES/DEPARTMENT OF TRANSPORTATION, Petitioner, v. THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL; JACALYN J. ZIMMERMAN, MICHAEL HADE, MICHAEL COLI, ALBERT WASHINGTON, and JESSICA KIMBROUGH, the Members of Said Board and Panel in Their Official Capacity Only; JOHN F. BROSNAN, Executive Director of Said Board in His Official Capacity Only; and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, Respondents.

District & No.

Fourth District
Docket No. 4-11-0825

Filed

January 28, 2013

Held

(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)

The Illinois Labor Relations Board, State Panel, erred in concluding, based on an administrative law judge's findings, that field technicians and a technical manager employed by the Department of Transportation were not supervisors for purposes of section 3(r) of the Illinois Public Labor Relations Act and should be included in a collective-bargaining unit sought by respondent union, since the work of those employees was substantially different from that of their subordinates and they spent the preponderance of their time using independent judgment in performing supervisory actions.

Decision Under Review	Petition for review of order of Illinois Labor Relations Board, State Panel, No. S-RC-10-194.
Judgment	Reversed.
Counsel on Appeal	Joseph M. Gagliardo and Lawrence Jay Weiner (argued), Special Assistant Attorneys General, of Chicago, for petitioner. Lisa Madigan, Attorney General, of Chicago (Michael A. Scodro, Solicitor General, and Sunil Bhawe (argued), Assistant Attorney General, of counsel), for respondent Illinois Labor Relations Board, State Panel. Dale Pierson (argued), Kenneth E. Edwards, and Deanna M. Distasio, all of Countryside, for respondent International Union of Operating Engineers, Local 150.
Panel	JUSTICE TURNER delivered the judgment of the court, with opinion. Justices Appleton and Knecht concurred in the judgment and opinion.

OPINION

- ¶ 1 Petitioner, the Department of Central Management Services (CMS), the Illinois Department of Transportation (IDOT), brings this action for direct review of a decision by the Illinois Labor Relations Board, State Panel (Board), granting the majority interest petition brought by the International Union of Operating Engineers, Local 150 (Union) to represent certain IDOT employees.
- ¶ 2 The Board, adopting the administrative law judge’s (ALJ) findings, concluded the field technicians and one technical manager were not supervisors within the meaning of section 3(r) of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/3(r) (West 2010)) and thus were eligible for inclusion in the collective-bargaining unit.
- ¶ 3 On appeal, petitioner argues the Board’s certification of representation was against the manifest weight of the evidence, clearly erroneous, and/or contrary to law because the petitioned-for employees are supervisory employees under the Act. We reverse.

¶ 4

I. BACKGROUND

¶ 5

Because the parties are familiar with the facts, we discuss them only to the extent necessary to put the parties' arguments in context.

¶ 6

A. Procedural History

¶ 7

In February 2010, the Union filed a representation-certification petition with the Board, seeking to become the exclusive bargaining representative of a bargaining unit of approximately 80 employees described as follows:

“All full-time and regular part-time employees in the following classification: Engineering Technician V, Engineering Technician IV (Bridge Maintenance Technician, Bridge Inspection Technician, Traffic Operations Technician, Equipment Technician and all other Engineering Technician IV titles which are currently not represented by another labor organization), Technical Manager VI (Central Operations Division of Highways, sign shop position only).”

At the start of the hearing before the ALJ in August 2010, the parties stipulated “the issue for hearing is whether any of the petitioned for employees in this case are supervisors within the meaning of Section 3(r) of the Act.” The parties also stipulated IDOT is an employer under the Act, the Union is a labor organization under the Act, and the principal work requirement of the petitioned-for employees is different from work performed by their subordinates.

¶ 8

B. IDOT Organization

¶ 9

IDOT is divided into nine districts, and each district is responsible for the maintenance of state roadways, including snow and ice removal, grass mowing, and pothole patching. The hierarchy of positions in each district is as follows: district engineer; operations manager/operations engineer; field engineers; field technicians/yard technicians; lead lead workers; lead workers; and highway maintainers.

¶ 10

District engineers typically oversee two districts. Operations managers are in charge of maintenance operations for their districts. The field engineer, a member of the Teamsters union, reports to the operations manager.

¶ 11

Following the field engineers are the positions at issue in this case, the engineering technicians IV and V (ET-IV and ET-V), commonly referred to as yard technicians or field technicians. The parties agreed the job descriptions of ET-IV and ET-V employees are substantially similar. Field technicians generally supervise two- to four-team sections. Below field technicians are lead lead workers, lead workers, and highway maintainers. Lead lead workers and lead workers are responsible for monitoring work and ensuring the work is performed properly. Highway maintainers are full-time, year-round employees, with the exception of “snowbirds,” who are seasonal, full-time workers hired during winter months. The lead lead workers, lead workers, and highway maintainers are members of the Teamsters union.

¶ 12 C. The Evidence Regarding the Supervisory Authority of Field Technicians

¶ 13 The parties stipulated the field technicians' work was substantially different from that of the lead workers and highway maintainers. Field technicians spend part of their workday addressing permit requests, guardrail damage claims, and other calls and complaints. Field technicians generally begin their day by sorting through e-mail and main correspondence, responding to and checking on complaints, and prioritizing issues concerning public complaints and legislative inquiries. Field technicians maintain logs of routes and damage, submit claims to district headquarters, obtain information regarding inspection of damage and repairs, and verify that any damage was repaired. The actual repair work is performed by the highway maintainers, who are monitored by the lead workers.

¶ 14 1. *The Evidence Regarding Direction*

¶ 15 Field technicians approve leave requests. Aaron Weatherholt, IDOT bureau chief for the central bureau of operations, testified field technicians spend approximately 5% to 10% of their time approving leave requests. Field technicians also approve overtime, but only in a manner consistent with the union contract. Rodney Masterson, a labor relations manager at IDOT, testified field technicians have discretion whether overtime needs to be worked. Overtime may be required in the event of flooding, nighttime calls for accidents, downed trees, and other unforeseen events. If overtime is required, field technicians inform upper levels of management. The operations manager decides whether to exceed the minimum overtime, and field technicians then have the authority to upgrade it. Weatherholt estimated field technicians spend 5% of their time determining the need for and scheduling overtime.

¶ 16 When it snows, field technicians spend the majority of their workday on the road. In the event of an expected large snowstorm, field technicians instruct their lead workers to mobilize at a certain time with a certain amount of manpower. If a surprise snowstorm hits, field technicians receive a call from the communication center, contact their lead workers, and instruct them to send out snowplows. Lead workers then call out the highway maintainers.

¶ 17 Carman IaCullo, an assistant regional engineer at IDOT, estimated field technicians spend 12% of their day assigning work. Weatherholt estimated field technicians spend 50% of their time assigning work. After field technicians prioritize work issues and consult with lead workers, the lead workers fill out daily assignment sheets, make assignments, and post assignment lists.

¶ 18 2. *The Evidence Regarding Grievances*

¶ 19 IDOT handles approximately 300 grievances a year, and approximately 70% of those are filed by highway maintainers. Field technicians are the first step of the grievance procedure, although an employee may choose to skip the first step of the grievance procedures. Field technicians do not have authority to resolve grievances related to discipline. The grievances handled by field technicians are predominantly related to call-out procedures. Although field technicians do not have authority to change payroll records, they may attempt to resolve a grievance due to a mistake in call-out procedures by notifying the personnel department that

the employee should be paid for the lost time.

¶ 20 If a field technician is able to resolve the grievance, it is unnecessary to fill out a form. However, if the field technician cannot resolve the grievance, he must fill out a preprinted form indicating the grievance has not been resolved. The field technician may attach a memorandum to the form before submitting the documents to his supervisor. Field technicians may be consulted at higher levels of the grievance process, including being called to testify at arbitration proceedings. Masterson estimated field technicians spend 10% of their time dealing with grievances. Ben Fathauer, a field technician in District 5, testified he dealt with a “few grievances” but never signed off on one or orally resolved one.

¶ 21 *3. The Evidence Regarding Discipline*

¶ 22 Field technicians are required to follow proper procedures in investigating rule infractions and may not issue discipline outside the prescribed chain of command. Field technicians are responsible for reporting rule infractions, violations, and other workplace incidents to their superiors. Rules infractions may come to the attention of field technicians through personal observations, reports by lead workers and highway maintainers, or through a complaint hotline. Before reporting these violations, field technicians may conduct an investigation and interview the employee involved in the incident.

¶ 23 Giovanni Fulgenzi, an IDOT personnel manager in District 1, testified field technicians recommend disciplinary action concerning their subordinates and those disciplinary recommendations are accepted approximately 80% to 90% of the time. When a field technician suspects an employee is abusing his sick leave, the field technician is authorized to require the employee provide proof of his sick status within a specified amount of time. If the employee fails to provide such proof, the field technician can initiate the disciplinary process.

¶ 24 *4. The Evidence Regarding Evaluations*

¶ 25 Field technicians may complete work performance evaluation forms for highway maintainers and full-time temporary employees (snowbirds). In most districts, the lead workers fill out performance evaluations for highway maintainers. Evaluators are instructed to leave blank the line recommending rehire, and the evaluations are forwarded to the field engineer or operations manager. Evaluations do not affect pay rate. Weatherholt estimated field technicians spend less than 5% of their time completing evaluations.

¶ 26 *D. The Evidence Regarding the Supervisory Authority of Joe Athey (TM-VI)*

¶ 27 Joe Athey, who reports directly to Weatherholt and runs the sign shop, is the sole TM-VI employee in the petitioned-for bargaining unit. Athey works with the districts on sign sheathing policies and delivery items. He is responsible for coordinating work in the sign shop. Weatherholt estimated Athey spends approximately 80% to 85% of his time assigning work to his subordinates. Athey monitors and evaluates his subordinates’ work performance, approves and denies time off, and decides whether overtime is required. Athey may

recommend discipline to Weatherholt, but Weatherholt had not had occasion to approve discipline yet. Prior to reporting directly to Weatherholt, Athey had initiated predisciplinary action against two employees and both cases ended in discharge. Athey participates in the hiring process. He also has control over budgetary expenses and does not need to seek approval before making purchases.

¶ 28

E. The ALJ Recommendation

¶ 29

In January 2011, the ALJ stated the issue was whether the petitioned-for employees are supervisors within the meaning of section 3(r) of the Act and therefore required to be excluded from the Act's coverage. As to discipline, the ALJ found field technicians do not have authority to discipline subordinates or to effectively recommend discipline. As to grievances, the ALJ found the field technician's designation as the first step of the grievance procedure was not enough to establish supervisory authority. As to directive authority, the ALJ found the evidence failed to establish field technicians performed duties involving time-off requests, approval of overtime, assignment of work, and completion of performance evaluations with the requisite independent judgment. As to Joe Athey, the ALJ found IDOT failed to establish he possessed supervisory authority to direct his subordinates. The ALJ concluded the employees in the petitioned-for unit are not supervisory employees within the meaning of section 3(r) of the Act and recommended the Union be certified as their exclusive representative for purposes of collective bargaining. *International Union of Operating Engineers, Local 150*, Administrative Law Judge's Recommended Decision and Order (Jan. 3, 2011).

¶ 30

F. The Board's Decision

¶ 31

In its June 2011 written decision, the Board found the ALJ's conclusion that the employees at issue are not supervisors was fully consistent with section 3(r) of the Act and the judicial precedent interpreting that section. The Board stated IDOT failed to meet the test for supervisory status and the evidence did not show the employees effectively recommended discipline. *International Union of Operating Engineers, Local 150*, 28 PERI ¶ 20, at 91 (ILRB State Panel 2011).

¶ 32

G. Board Certification

¶ 33

In August 2011, the Board's Executive Director issued a certification of representation, certifying that, based upon a determination of the existence of majority of support, pursuant to sections 6(c) and 9(d) of the Act (5 ILCS 315/6(c), 9(d) (West 2010)), the Union is the exclusive representative of all employees within the petitioned-for bargaining unit. This direct appeal followed.

¶ 34

II. ANALYSIS

¶ 35

A. Standard of Review

¶ 36

The Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2010)) governs the

judicial review of a decision by the Board certifying a labor organization as the exclusive bargaining representative of a group of employees. 5 ILCS 315/9(i) (West 2010); *County of Cook v. Illinois Labor Relations Board-Local Panel*, 351 Ill. App. 3d 379, 385, 813 N.E.2d 1107, 1113 (2004). According to section 3-110 of the Administrative Review Law, our “hearing and determination shall extend to all questions of law and fact presented by the entire record before the court.” 735 ILCS 5/3-110 (West 2010).

¶ 37 This court may apply three standards of review when reviewing the Board’s decision, depending on the nature of the question presented. If the question is one purely of fact, we deem the Board’s findings and conclusions to be “prima facie true and correct.” 735 ILCS 5/3-110 (West 2010); see also *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board, State Panel*, 216 Ill. 2d 569, 577, 839 N.E.2d 479, 485 (2005) (hereinafter *AFSCME*). “As such, when a court is reviewing an agency’s factual findings, it will not reweigh the evidence nor will it substitute its judgment for that of the agency. Rather, the court will ascertain only if the findings of fact are against the manifest weight of the evidence.” *AFSCME*, 216 Ill. 2d at 577, 839 N.E.2d at 485. A factual determination is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210, 886 N.E.2d 1011, 1018 (2008).

¶ 38 If, however, the question is one purely of law, we give the Board no deference unless it resolved a genuine ambiguity in a statute or regulation it was charged with administering. See *Illinois Bell Telephone Co. v. Illinois Commerce Comm’n*, 362 Ill. App. 3d 652, 656, 840 N.E.2d 704, 708 (2005). We decide legal questions *de novo*. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532, 870 N.E.2d 273, 293 (2006) (*per curiam*).

¶ 39 We review mixed questions of fact and law by asking whether the agency’s decision is clearly erroneous. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 392, 763 N.E.2d 272, 280 (2001). Under this standard of review, we give some deference to the Board’s decision, but not as much deference if the question were one purely of fact. *AFM*, 198 Ill. 2d at 392, 763 N.E.2d at 280. A “decision will be deemed clearly erroneous ‘only where the reviewing court, on the entire record, is ‘left with the definite and firm conviction that a mistake has been committed.’” ” *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337, 909 N.E.2d 806, 814 (2009) (quoting *AFM*, 198 Ill. 2d at 395, 763 N.E.2d at 282, quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 40 B. Supervisory Status–Field Technicians (ET-IV and ET-V)

¶ 41 “The [Act] provides a comprehensive system of collective bargaining for those public employees and employers who fall within its scope.” *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 505, 554 N.E.2d 155, 158 (1990). Section 6 of the Act provides “[e]mployees of the State *** have, and are protected in the exercise of, the right to self-organization, and may form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and

other conditions of employment.” 5 ILCS 315/6(a) (West 2010). The Act defines “employee” as “an individual employed by a public employer, *** excluding *** supervisors.” 5 ILCS 315/3(n) (West 2010).

¶ 42 “In order to ensure that a pro-union bias will not impair a supervisor’s ability to apply the employer’s policies to subordinates in accordance with the employer’s best interests, the Act provides that a bargaining unit may not contain both supervisors and nonsupervisors.” *Department of Central Management Services v. Illinois State Labor Relations Board*, 278 Ill. App. 3d 79, 83, 662 N.E.2d 131, 134 (1996). The Act excludes supervisors from bargaining units that contain their subordinates, in order to avoid the conflict of interest that arises when supervisors, who must apply the employer’s policies to the subordinates, are subject to control by the same union representing the subordinates. *City of Freeport*, 135 Ill. 2d at 517, 554 N.E.2d at 164.

¶ 43 Section 3(r) of the Act defines a “supervisor” as follows:

“ ‘Supervisor’ is an employee whose principal work is substantially different from that of his or her subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. Except with respect to police employment, the term ‘supervisor’ includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding.” 5 ILCS 315/3(r) (West 2010).

¶ 44 Our supreme court has set forth a four-part test to determine whether an employee meets the definition of “supervisor” under section 3(r) of the Act. *Chief Judge of the Circuit Court v. American Federation of State, County & Municipal Employees, Council 31*, 153 Ill. 2d 508, 515, 607 N.E.2d 182, 186 (1992).

“The test requires that (1) the supervisory employee must perform principal work substantially different from that of her subordinates; (2) the supervisory employee must have authority to perform some or all of the 11 functions enumerated in section 3(r); (3) the supervisory employee must consistently use independent judgment in the performance of these 11 enumerated functions; and (4) generally, the supervisory employee must devote a preponderance of her time to exercising the authority to handle these 11 functions.” *Chief Judge*, 153 Ill. 2d at 515, 607 N.E.2d at 186.

¶ 45 In the case *sub judice*, the parties stipulated that the principal work of the petitioned-for employees was substantially different from that of their subordinates. Thus, only the second, third, and fourth elements of supervisory status are at issue in this appeal.

¶ 46 1. *Indicia of Supervisory Authority and Independent Judgment*

¶ 47 IDOT, as the party seeking to exclude the employees from the union, had the burden of proving, by a preponderance of the evidence, the field technicians were “supervisors.” *Department of Central Management Services (State Police) v. Illinois Labor Relations Board, State Panel*, 382 Ill. App. 3d 208, 220-21, 888 N.E.2d 562, 575 (2008). To carry that

IaCullo stated field technicians spend approximately 20% to 25% of their time approving time-off requests. Weatherholt testified field technicians approve time off for their subordinates and spend 5% to 10% of their day doing so. He also stated field technicians spend 5% of their day dealing with overtime. The authority to choose whether to grant or deny leave requests and schedule overtime demonstrates independent judgment on the part of field technicians. See *Department of Central Management Services*, 2011 IL App (4th) 090966, ¶ 213, 959 N.E.2d 114 (finding the evidence that the employee had authority to assign and monitor work, evaluate employees, and approve time-off requests satisfied the requirement that a supervisor “direct” his subordinates with independent judgment).

¶ 53 c. Supervisory Authority and Independent Judgment
To Discipline Subordinates

¶ 54 Masterson testified field technicians get involved with grievances at the first level and have the ability to resolve them at that level. He stated field technicians might write the rule infraction, conduct an investigation, and recommend discipline. Although field technicians do not make the final call on discipline, their disciplinary recommendations are accepted 70% to 80% of the time. Masterson stated field technicians spend 10% of their day dealing with grievances and 5% investigating incidents and dealing with discipline. While field technicians do not have the final authority to fire an employee as a matter of discipline, “[t]he power to *** recommend more severe disciplinary action has been found to be authority to discipline.” *City of Sandwich v. Illinois Labor Relations Board, State Panel*, 406 Ill. App. 3d 1006, 1012, 942 N.E.2d 675, 681 (2011). Moreover, that other employees might also be involved in the disciplinary decisionmaking process does not mean a field technician is not making an independent judgment at that level of the chain of command. *Department of Central Management Services*, 2011 IL App (4th) 090966, ¶ 208, 959 N.E.2d 114.

¶ 55 A field technician can also place a subordinate on proof status. Fulgenzi stated proof status is served on an employee when there is a possible abuse or misuse of sick leave time. Proof status by itself is not discipline but it can lead to discipline. If the employee fails to bring in a doctor’s note, the field technician starts the disciplinary process. This court has found placing an employee on proof status “evince[s] independent judgment sufficient to show an indication of supervisory authority to discipline.” *Department of Central Management Services/The Department of Public Health v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4th) 110013, ¶ 79, 979 N.E.2d 603.

¶ 56 2. Preponderance of Time Element

¶ 57 The fourth element of the supervisory definition specifies the employee must also devote the preponderance of his employment time to exercising supervisory authority to be found a supervisor. *Chief Judge*, 153 Ill. 2d at 515, 607 N.E.2d at 186. In *City of Freeport*, the supreme court considered the “preponderance” test and noted the Board’s interpretation, stating, “The Board has interpreted the term ‘preponderance’ to mean that the most significant allotment of the employee’s time must be spent exercising supervisory functions. [Citation.] In other words, the employee must spend more time on supervisory functions than

on any one nonsupervisory function.” *City of Freeport*, 135 Ill. 2d at 532-33, 554 N.E.2d at 171.

¶ 58 We note IDOT argues the preponderance of time requirement does not apply in this case because the Act includes the phrase “State supervisors notwithstanding.” 5 ILCS 315/3(r) (West 2010). This court has previously found the language “does not exempt State supervisors from the ‘preponderance’ requirement.” *Department of Central Management Services v. Illinois State Labor Relations Board*, 249 Ill. App. 3d 740, 745, 619 N.E.2d 239, 243 (1993). IDOT has not articulated any justification for us to revisit this issue. Thus, we will look at whether the time element has been satisfied here.

¶ 59 Here, the testimony satisfied the preponderance of employment time test. We note the number of times a supervisor exercises his authority is not dispositive. *Village of Maryville v. Illinois Labor Relations Board, State Panel*, 402 Ill. App. 3d 369, 374-75, 932 N.E.2d 558, 563-64 (2010); *City of Freeport*, 135 Ill. 2d at 518, 554 N.E.2d at 164 (“[t]he potential for a conflict of interest lies in the supervisor’s *authority* to influence or control personnel decisions in areas most likely to affect the employment of subordinates and, thus, most likely to fall within the scope of union representation” (emphasis in original)). Instead, “it is the existence of the supervisory authority *** that is essential, not the amount of time such authority is exercised.” *City of Peru v. Illinois State Labor Relations Board*, 167 Ill. App. 3d 284, 292, 521 N.E.2d 108, 114 (1988); *City of Freeport*, 135 Ill. 2d at 518, 554 N.E.2d at 164-65 (“[t]he Board’s reliance upon the number of times such authority was exercised was improper”).

¶ 60 Weatherholt testified field technicians spend approximately 50% of their time assigning work to their subordinates, 5% to 10% of their time scheduling overtime and considering time-off requests, and 5% of their time conducting evaluations. Masterson and IaCullo also testified to the amount of time field technicians spend dealing with time-off requests, assignment of work duties, and investigating incidents. The testimony indicates field technicians spend a predominate amount of time in supervisory functions. That some of the field technicians who testified do not exercise their authority on a regular basis “does not destroy the existence or the effectiveness of the authority.” *City of Peru*, 167 Ill. App. 3d at 292, 521 N.E.2d at 114. Moreover, their authority to influence or control personnel decisions involving lead lead workers, lead workers, and highway maintainers evinces a potential for a conflict of interest if the field technicians and their subordinates were both unionized. Even considering the clearly erroneous standard, we conclude the Board erred in finding the field technicians are not supervisors within the meaning of section 3(r) of the Act.

¶ 61 C. Supervisory Status—Joe Athey (TM-VI)

¶ 62 We also conclude the Board erred in finding Joe Athey is not a supervisor within the meaning of section 3(r) of the Act. The evidence shows Athey has supervisory authority and independent judgment regarding the operation of the sign shop. Masterson testified Athey oversees the day-to-day functions of the sign shop and its 10 to 11 employees. Weatherholt testified Athey spends 80% to 85% of his day assigning work. Athey monitors and evaluates the employees’ performance, completes performance evaluations, approves or denies time

off for his subordinates based on operational need, decides whether overtime is required, and recommends discipline. Athey also participates in the interview process and decides what to spend as to the sign shop's budget. Weatherholt testified Athey typically does not need his approval for budget decisions. The evidence indicated Athey performs supervisory actions, utilizes independent judgment, and spends a preponderance of his time exercising supervisory authority. Thus, he is a supervisor within the meaning of the Act.

¶ 63

III. CONCLUSION

¶ 64

For the reasons stated, we reverse the Board's decision.

¶ 65

Reversed.