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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE VILLAGE OF OAK BROOK,)	Petition for Review of Order of the
)	Illinois Labor Relations Board, State Panel
)	
Petitioner,)	
)	
v.)	
)	
THE ILLINOIS LABOR RELATIONS)	
BOARD, STATE PANEL and)	
METROPOLITAN ALLIANCE of POLICE,)	No. S—RC—09—057
OAK BROOK SERGEANTS CHAPTER)	
NO. 534)	
)	
)	
Respondents.)	

JUSTICE BIRKETT delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: The evidence presented at a hearing before the Illinois Labor Relations Board, State Panel, was sufficient to prove that the sergeants employed by the Oak Brook Police Department had supervisory authority in the following areas: (1) direct; (2) discipline; (3) reward; (4) promote; and (5) adjust grievances. Therefore, the Board clearly erred in ruling that the sergeants were not supervisors within the meaning of the Illinois Public Labor Relations Act (5 ILCS 315/3(r) (West 2010)) and subsequently certifying the Metropolitan Alliance of Police, Oak Brook

Sergeants No. 54 as the exclusive representative of the Oak Brook Village's sergeants.

Petitioner, Village of Oakbrook (Village), seeks administrative review of the decision of respondent Illinois Labor Relations Board, State Panel (Board), certifying respondent Metropolitan Alliance of Police, Oak Brook Sergeants No. 54 (Union), as the exclusive representative of all police sergeants employed by the Village. The Village challenges the Board's finding that the sergeants were not "supervisors" within the meaning of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/3(r) (West 2010)) and the Board's subsequent certification of the Union as the exclusive representative of the Village's sergeants. For the following reasons, we find that the Board's ruling that the Village's sergeants were not "supervisors" under the Act was clearly erroneous. See 5 ILCS 315/3(r) (West 2010). Therefore, we reverse the Board's order and vacate the certification of representation.

FACTS

On October 8, 2008, the Union filed a representation/certification petition with the Board seeking to represent the Village's sergeants for purposes of collective bargaining. On May 11, 2009, the Board's Administration Law Judge (ALJ) held a hearing on the petition.

The record reflects that the Village is located west of Chicago and has approximately 8,800 residents. The daily operations of the Village are performed by the Village manager, who oversees all of the departments in the Village, including the police department (department). The department is organized into three divisions: (1) Investigations; (2) Support Services; and (3) Field Services. At the top of the department hierarchy is the chief of police (chief), who reports directly to the Village president. Next are the deputy chief and three lieutenants. One lieutenant heads up each of the three divisions in the department. There are six police sergeants and they all serve in the Field Services division, which is the department's patrol division.

Lieutenant Cates is the lieutenant in charge of that division. Finally, the patrol officers are below the sergeants.

At the beginning of the hearing before the ALJ, the Village informed the ALJ that it would be presenting evidence that the sergeants use independent judgment in performing the following supervisory functions: (1) direct; (2) discipline; (3) reward; (4) promote; and (5) adjust grievances. See 5 ILCS 315/3(r) (West Supp. 2009).

At the hearing, Lieutenant Jason Cates testified on behalf of the Village. Cates said that he began his career with the department as a patrolman in 1992. He was promoted to the rank of sergeant in 2000, and to the rank of lieutenant in 2006. Cates said that two sergeants are assigned to each of the three shifts in the Field Services Division. The shifts are divided into day, afternoon, and midnight shifts. Generally, there are two sergeants and seven patrol officers per shift. Cates explained the sergeants' duties as described in the departmental job description. Sergeants are responsible for overseeing the day-to-day operations of their shift. They approve overtime requests, schedule breaks, assign vehicles and make recommendations on training equipment, staffing and scheduling. The job description specifically provides that "the position requires the consistent use of independent judgment based on a thorough knowledge of Department policy and procedure."

Cates testified that sergeants arrive at the station 15 minutes prior to the officers. During that time they decide what information should be disseminated to the officers, patrol zone assignments for the officers, and determine whether any officers should be assigned to a special detail. Sergeants also decide whether all of the officers assigned for court on a given day are to attend. How the balance of their shift is spent is up to the individual sergeants' discretion.

Whether they review reports, work on a program or go out on patrol is a decision the sergeants make without any direction from a superior.

Lieutenant Cates said that sergeants are not expected to patrol on a regular basis. When they do patrol they are only expected to respond to high level liability calls, for example, domestic violence complaints and fatal traffic accidents. In those instances, the sergeant is present to ensure that the officer responding to the call is following proper procedure and that the officer receives an appropriate level of direction and supervision. According to Lieutenant Cates, sergeants are assigned to respond to less than seven percent of the total calls.

Sergeants have the authority to decide whether to operate their shift below the minimum manpower standard. They also have the authority to approve time off requests, hold an officer over in the event of a manpower shortage, handle sick days and approve compensatory time without the approval of a superior.

Lieutenant Cates testified that someone from the command staff (the chief, deputy chief, or the lieutenants) is on duty for approximately 56 ¼ hours per week. For the remaining 118 hours, the sergeants are the highest ranking individuals on duty at the Department.

With regard to their authority to direct, Cates said that sergeants complete quarterly and annual evaluations for the officers under their command. The evaluations are prepared exclusively by the sergeants who then review them with the officers. Annual evaluations are important because they have a direct effect on salary increases. For officers at the top of the pay grade the annual evaluation is a determining factor in whether they are eligible for a longevity bonus. Officers who are not at the top of their pay grade are eligible for merit increases based on the annual evaluation. The range of annual percentage increase is from one to five percent. Lieutenant Cates explained that the pace at which an officer reaches the top salary grade is

directly affected by the evaluations which the sergeants prepare. The result of these evaluations can cause an officer to reach the top salary grade in as little as four years or as many as eight years.

When asked whether he made any substantive changes to the sergeants' evaluation of an officer's performance, Cates said that he did not change the numerical value in any way. However, he has mentioned to sergeants when the score that they had given the officer did not equal the sergeant's commentary included in the evaluation. In those cases, Cates said that to his knowledge, the sergeants simply "beefed up" the commentary to justify the score. Also, there had been times when a sergeant was unaware of or had forgotten about a commendation or disciplinary action and Cates had told the sergeant to include that information in the evaluation. Lieutenant Cates reiterated, however, that he had never changed a numerical score on the officers' evaluations, and that those evaluations were the sole criteria for merit pay.

On cross-examination, Lieutenant Cates was asked if the numerical score on an evaluation had ever been changed by a sergeant so that the officer ultimately received less money after Cates had reviewed the evaluation and made comments to the sergeant about the evaluation. Cates responded that such a case was possible.

Lieutenant Cates testified that the disciplinary process within the department is governed by General Order 96-20 (General Order). Section III D of the General Order lists the following as various disciplinary options within the Department: documented counseling sessions, documented verbal reprimand, written reprimand, suspension and dismissal. Sergeants are authorized to issue documented counseling sessions and documented verbal reprimands.

General Order 96-20 recognizes sergeants as “first line supervisors” who possess “the best opportunity to observe the conduct and appearance of employees and to detect those instances where disciplinary actions are warranted.” General Order 96-20 III H 1.

Cates explained that the department maintains an operational file for each officer, which includes documentation of discipline issued against that officer. For example, a documented verbal reprimand could be placed in an officer’s operational file and serve as the basis for further discipline in the case of future instances of misconduct. Cates noted that while sergeants do not have access to the operational file, a sergeant could review such a file with permission. However, Cates has never received a request from a sergeant to view an officer’s operational file.

Cates said that the Department follows a progressive discipline philosophy in which documented verbal reprimands may serve as a basis for more serious discipline in the future. Cates testified that in the nine years he has served as a lieutenant and sergeant, no documented counseling session or documented verbal reprimand issued by a sergeant has ever been reversed.

Investigations into police misconduct are governed by section 96-36 of the General Order. During such an investigation, the sergeant has the authority to relieve an officer of duty with pay. A sergeant does not need approval of a superior to make such a decision. At the conclusion of the investigation, the sergeant can dismiss the complaint, issue a documented counseling session, issue a documented verbal reprimand or recommend additional discipline up through the chain of command.

With regard to the sergeants’ ability to reward, Lieutenant Cates testified that sergeants can recommend officers for a letter of recognition. Such letters are then included in the officers’ personnel file and are a factor in determining duty assignments and promotions. With regard to

recommendation, Cates also testified that the sergeants recommend officers to serve as field training officers. Those employees are paid an extra dollar per hour while acting in that capacity. Without a sergeant recommendation the Chief will not appoint someone as a field training officer.

Cates testified that sergeants also have the authority to select officers for special duty assignments. As an example, Lieutenant Cates noted that Sergeant Shuey was assigned to manage the tactical unit. Sergeant Shuey selected eight officers for the unit, all of whom were confirmed by the chief of police. The selection to this assignment is highly desirable since it allows the officers to wear plain clothes and work a very flexible schedule. The position also afforded them a greater opportunity to earn additional compensation through overtime pay.

Cates said that another important duty of the sergeants is the selection of assistant shift commanders (ASC). An ASC receives an annual stipend of \$1,500 as well as 15 minutes of overtime whenever one of the sergeants assigned to a shift is off duty. The sole role of an ASC is to assist the sergeants in the efficient operation of the shift. ASCs are appointed by the chief on the recommendation of sergeants. Absent that recommendation, an officer would never be appointed as an ASC.

With regard to the adjustment of grievances, the Village is a party to a collective bargaining agreement (agreement) with the Fraternal Order of Police that covers patrol officers. Section 5.2 of the agreement contains the grievance procedure. The sergeant is required in step one of the process to respond to the written grievance. That section provides, in pertinent part:

“Any employee who has a grievance shall submit the grievance in writing to the employee’s (in most cases, the Sergeant in charge) immediate supervisor and the appropriate Division Commander. *** The immediate supervisor or the appropriate

Division Commander shall render a written response to the grievant and the Union Steward within ten (10) business days after the grievance is presented.”

Sergeants Robert Birdsall, Mark King, and Donald Jacobs then testified on behalf of the Union. With regard to the authority to direct, Sergeant Jacobs testified that the officers’ zone assignments for patrolling duties are rotated regularly to be as fair as possible for all the officers. Therefore, each officer patrols each of the Village’s zones for roughly the same amount of time.

The officers’ vacation days are approved through departmental policy, and Lieutenant Cates instructs the sergeants as to whether requests for time off should be approved. A sergeant is authorized to approve a leave request only if minimum manpower levels will not be compromised, and if a sergeant denies a request, the officer can appeal the denial to a superior officer.

Sergeant Birdsall testified about the department’s evaluation process. Birdsall said that he personally performed 8 to 12 evaluations a year for the five years that he had been a sergeant. Of these 40 to 60 evaluations, he claimed that he had adjusted three evaluations after receiving comments from Lieutenant Cates. When asked about a specific example, Birdsall said that on one of these evaluations he had given an officer a score of 87, which was considered an “excellent” rating. However, Birdsall said that after he adhered to the directions from Lieutenant Cates, the resulting evaluation resulted in a score of 84, which lowered the officer’s rating to “above standards.” On cross-examination, however, Birdsall admitted that he did not change the language to support the number in the section that Lieutenant Cates had commented upon, and instead he simply just reduced the number himself. Birdsall also admitted that Cates did not tell him that he could not go back and rewrite the report.

With regard to discipline, Sergeant Birdsall testified that although sergeants have the authority to conduct a counseling session or to issue an oral reprimand, they do not do so without discussing the matter first with Lieutenant Cates. Sergeants King and Jacobs testified that neither of them had ever taken any disciplinary action against an officer without Cates' approval.

Sergeant Jacobs testified that although sergeants had the authority to document a counseling session or an oral reprimand to a subordinate, the sergeants' role was only to report instances of misconduct to superior officers. According to Jacobs, after reporting the misconduct, a superior officer would take corrective action. However, Jacobs also testified that he had issued a total of 10 counselings and documented verbal reprimands as a sergeant and that none of those forms of discipline were overwritten by a lieutenant.

With regard to recommending discipline, Sergeant Birdsall testified about an incident where an officer did not perform a thorough booking search of a suspect when he was brought into the department, and it resulted in drugs being found on the suspect when he was later transported to the DuPage County Jail. Sergeant Birdsall and Lieutenant Cates recommended ordering that the officer receive a three-day suspension without pay, but the chief ordered that the officer be retrained instead. In another instance, Sergeant Jacobs recommended that an officer be issued a written reprimand for an unauthorized absence from his shift, but the chief instead suspended the officer for two days without pay.

With respect to the authority to reward, Sergeant Jacobs testified that he had not been consulted to make a recommendation on a specialty assignment in two years.

With regard to the sergeants' ability to promote, Birdsall testified that in 2005 he recommended an officer for the position of assistant shift commander, but that recommendation was declined because the officer's performance on the street was not acceptable in the eyes of

the department's command staff. On cross-examination, however, Birdsall admitted that he also recommended three other officers to be assistant shift commanders in 2005 and those recommendations were all followed.

Sergeant Jacobs testified about the sergeants' authority to adjust grievances. Jacobs said that he has not had a grievance presented to him by a patrol officer in the several years that he has been employed by the Village.

On July 23, 2009, the ALJ issued a Recommended Decision and Order. In its order, the ALJ found that the sergeants performed substantially different principal work than their subordinate police officers. However, it concluded that the sergeants did not possess the authority to perform any of the statutory indicia of supervisory authority with the requisite independent judgment to satisfy the Act's supervisory definition. See 5 ILCS 315/3(r) (West Supp. 2009). Therefore, the ALJ determined: (1) the sergeants were not supervisors within the meaning of section 3(r) of the Act (5 ILCS 315/3(r) (West Supp. 2009)); and (2) the Union was the exclusive bargaining representative under the Act for the sergeants.

The Village filed exceptions to the ALJ's recommendations and the Union responded. On February 1, 2010, the Board issued a final administrative decision affirming the ALJ's recommendation and certifying the Union as the exclusive representative of the Village's sergeants.

In its order, the Board agreed with the ALJ that the sergeants' principal work was substantially different from that of their subordinates. It then addressed the five indicia of supervisory authority that the Village alleged the sergeants possessed under the Act. See 5 ILCS 315/3(r) (West 2010).

With regard to the authority to direct, the Board found that the sergeants had no authority to direct because the sergeants did not use independent judgment in evaluating their subordinates when Lieutenant Cates and the sergeants jointly collaborate on the evaluations.

With respect to discipline, the Board found that the sergeants lacked the authority to discipline with the requisite independent judgment because the Village presented no evidence that if a sergeant issued a subordinate a set number of documented counseling or oral reprimands within a certain time period, similar additional violations during that time period would result in the issuance of more severe discipline. Instead, the Board concluded that the Village's system of documenting counselings and oral reprimands was simply a method of keeping track of employee misconduct. The Board also ruled that sergeants did not effectively recommend discipline against their subordinates because the sergeants' recommendations of discipline are independently reviewed by their superior officers and are never adopted as a matter of course.

The Board also ruled that the sergeants did not possess the authority to effectively recommend rewards or promotions under the Act. See 5 ILCS 315/3(r) (West 2010). The Board found that the chief of police had not sought input from the sergeants in making specialty assignments in the two years prior to the hearing. With regard to evaluations, the Board noted that although the sergeants' evaluations of their subordinates were used to promote officers to assistant shift commander positions, there was no evidence to indicate to what extent the chief relied on the evaluations in making his choices. It also found that the sergeants and the lieutenant recommended names of officers to the chief on a consensus basis and that decisions based on a consensus do not constitute the required independent judgment necessary to prove supervisory authority.

With regard to adjusting grievances, the Board ruled that while the subordinate officers' collective bargaining agreement designates the sergeants as the first step in the grievance process, there was no record evidence to show that the sergeants did anything more than deny grievances and pass them up the chain of command. Therefore, the Board concluded that the sergeants did not possess the authority to adjust grievances within the meaning of section 3(r) of the Act. See 5 ILCS 315/3(r) (West 2010).

ANALYSIS

On appeal, the Village argues that the Board erred in finding that the Village's sergeants are not supervisors pursuant to section 3(r) of the Act. See 5 ILCS 315/3(r) (West 2010). Specifically, the Village argues that the sergeants use independent judgment in performing the following supervisory functions: (1) direct; (2) discipline; (3) reward; (4) promote; and (5) adjust grievances.

On administrative review of an agency's decision, this court's review extends to all questions of fact and law presented in the record. 735 ILCS 5/3–110 (West 2010). It is the Board's order, not the decision of the ALJ, that is the subject of judicial review. 5 ILCS 315/9(I) (West 2010). Where mixed questions of law and fact are involved, *i.e.*, where historical facts are established or undisputed, and the issue is whether those facts satisfy the statutory standard, such cases are examined under a clearly erroneous standard. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008). An agency's decision is clearly erroneous when the reviewing court is left with a firm and definite conviction that the agency has committed a mistake. *Cinkus*, 228 Ill. 2d at 211.

A class of jobs or positions held by employees who share collective interests may form a unit to be represented by a labor organization for collective bargaining. 5 ILCS 315/3(s)(1)

(West 2010). With respect to non-state police officers, such as the sergeants here, the Board cannot certify for the purpose of collective bargaining a unit consisting of both supervisors and non-supervisors, or supervisors only, unless the employer agrees. 5 ILCS 315/3(s) (West 2010). “Supervisors are excluded from bargaining units under the Act to avoid the conflict of interest [that] arises when supervisors, who must apply the employer’s policies to subordinates, are subject to control by the same union representing those subordinates.” *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 517 (1990).

The definition of “supervisor” in the Act provides, in pertinent part:

“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 to exercising that authority, State supervisors notwithstanding. In addition, in determining supervisory status in police employment, rank shall not be determinative.” 5 ILCS 315/3(s) (West 2010).

A police officer can be considered a supervisor under the Act only if he: (1) performs principal work substantially different from that of his subordinates; (2) has authority in the interest of the employer to perform one or more of the 11 enumerated supervisory functions or to effectively recommend such action; and (3) consistently uses independent judgment in performing or recommending the enumerated actions. *Village of Hazelcrest v. Illinois Labor*

Relations Board, 385 Ill. App. 3d 109, 114 (2008). The presence of even one indicium of supervisory authority is sufficient to support a finding of supervisory status. *Metropolitan Alliance of Police v. Illinois Labor Relations Board*, 362 Ill. App. 3d 469, 477 (2005).

Here, the Board agreed with the ALJ's conclusion that the sergeants' principal work was substantially different from that of their subordinates, thereby meeting the first requirement in the test to determine supervisory status. See *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 512 (1990). The Union does not dispute this finding on appeal. Therefore, the only issue before this court is whether the sergeants have the authority to perform one of the 11 supervisory functions listed in section 3(r) of the Act, and whether they consistently use independent judgment in performing those functions. As previously noted, the Village argues that the sergeants use independent judgment in performing the following supervisory functions: (1) direct; (2) discipline; (3) reward; (4) promote; and (5) adjust grievances. We will address each function separately.

Authority to Direct

First, the Village argues that the Board's conclusion that the sergeants do not use independent judgment in directing the patrol officers was clearly erroneous. Specifically, the Village alleges that there is no factual basis for the Board's findings that the evaluations were performed on a consensus basis and that Lieutenant Cates was a necessary participant in the evaluations. In response, the Board alleges: (1) Cates admitted that based on his review and comments, the sergeants have changed the numerical score given to an officer, which then changed the amount of salary increase the officer is awarded; (2) Cates often instructs sergeants to "beef up" comments under a particular section of the evaluation; and (3) Sergeant Birdsall testified that some of the evaluations he performed were conducted jointly with other sergeants.

The term “direct” encompasses a number of distinct, yet related, functions when reviewing and monitoring work activities, scheduling work hours, approving time off and overtime, assigning duties, and formally evaluating job performances when the evaluation is used to affect employees’ pay and employment status. *Illinois Department of Central Management Services v. Illinois Labor Relations Board*, 382 Ill. App. 3d 208, 224 (2008). In order to qualify for “supervisory authority to direct” within the meaning of the Act, a police employee’s responsibilities must involve significant discretionary authority to affect his or her subordinates’ terms and conditions of employment. *Illinois Department of Central Management Services*, 382 Ill. App. 3d at 224.

Here, we find that the Board’s conclusion that the sergeants did not use independent judgment in directing the Village’s patrol officers is clearly erroneous. First, a review of the record shows that Cates did not admit that his review of the evaluations caused the sergeants to change the score of an evaluation. When asked if the numerical scores on an evaluation had ever been changed by a sergeant so that the officer ultimately received less money after Cates had reviewed the evaluation, Cates simply testified that such a case was possible. However, Cates never testified about any direct knowledge that this scenario had ever occurred.

Second, a review of Lieutenant Cates’ testimony indicates that he did not testify that he instructs sergeants to “beef up” comments under a particular section of the evaluation. Cates’ verbatim testimony is as follows:

“Q. Do you make any substantive changes to the evaluations?

A. I do not change the numerical value in any way. I may point out – I may make commentary as to whether I believe that the commentary included in the evaluation by the supervisor is equal to the score that they have

assigned; and generally, almost all of the time, to my knowledge, what they [sergeants] do is simply beef up the commentary to justify the score.

But I have never directed them to change the numerical value.”

Cates’ testimony is clear that to his knowledge the sergeants simply beef up the commentary to justify the score. Cates also testified that not only has he never directed a sergeant to change the numerical value on an evaluation, he himself has never changed a numerical value of an evaluation.

Third, the Board contends that the sergeants collaborated with each other in conducting the evaluations. However, Birdsall only testified that he conducted one evaluation with King. Moreover, he did not testify as to how he and King collaborated or why they both purportedly participated in that particular evaluation. Instead, there is ample evidence that the sergeants use independent judgment in directing their subordinate officers during the evaluation process. It was within the sergeants’ discretion as to how to respond to any comments that Lieutenant Cates made to them about the police officer evaluations. The fact that Cates would review the evaluations and comment on missing information or scores that were not supported by adequate commentary is not evidence that the sergeants did not use independent judgment in conducting the evaluations or that the process was otherwise collaborative. Based on the record before the Board, we find that it clearly erred when it found that the Village’s sergeants did not use independent judgment in directing their subordinate officers under the Act. See 5 ILCS 315/3(r) (West 2010).

Authority to Discipline

Next, the Village argues that the Board clearly erred in ruling that the sergeants lacked the requisite independent judgment to discipline their subordinates under the Act. See 5 ILCS 315/3(r) (West 2010).

Verbal reprimands constitute discipline under the Act if they are documented. See *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 518-19 (1990). Also, the power to recommend more severe discipline can suffice as discipline. *City of Freeport*, 135 Ill. 2d at 518-519. Further, it is the authority to use independent judgment in imposing discipline, rather than how often such discipline is imposed, that is important. *City of Freeport*, 135 Ill. 2d at 520-21.

Here, the Board does not dispute that the sergeants issue discipline in the form of documented verbal counselings and documented verbal reprimands. The Board instead argues that sergeants do not use independent judgment in issuing discipline because Sergeants Birdsall, King and Jacobs testified that they never took any disciplinary action against an officer without first seeking input from Lieutenant Cates.

The record reflects, however, that on cross-examination, Sergeant Birdsall admitted that he sought Lieutenant Cates' guidance on his own volition and not as a result of departmental mandate. Moreover, Sergeant King offered no testimony about any disciplinary measures that he imposed and were reversed, and Sergeant Jacobs admitted that none of the 10 counseling and documented verbal reprimands that he had issued as a sergeant were overwritten by a lieutenant.

As an indication that sergeants lack independent judgement in issuing discipline the Board also suggests that the sergeants do not have access to the operational file. However, Cates testified that a sergeant could be given access to the file if a request was made. Moreover, none

of the sergeants testified that an examination of an officer's operational file was a prerequisite to the issuance of a documented counseling session or documented verbal reprimand.

The Board also argues that it appropriately determined that the sergeants do not exercise independent judgment because there was no evidence that such discipline was part of a "progressive disciplinary policy." We disagree. The record makes clear that the Village police department followed a policy of progressive discipline and that the sergeants possessed the authority to issue documented verbal counselings and reprimands as part of it. See *Metropolitan Alliance of Police, Village of Woodridge Police Sergeants, Chapter No. 132 v. Illinois Labor Relations Board*, 362 Ill. App. 3d 469, 478 (2005) (documented oral reprimands issued by the sergeants show requisite authority to issue discipline with independent judgment when there was no evidence that the oral reprimands were reviewed for appropriateness by command staff and the reprimands could serve as the basis for discipline in the event of future misconduct).

The record is clear that the sergeants possess the authority to exercise independent judgment in issuing discipline. Lieutenant Cates, a sergeant for six years before he was promoted to lieutenant, testified that he could not recall a single instance when a documented counseling or a documented verbal reprimand issued by a sergeant was reversed. Moreover, the fact that the sergeants testified that on a few occasions their recommended discipline of more serious infractions in some cases was not followed is not evidence of the lack of authority to discipline.

Finally, the Board's decision did not even mention the department's General Order 96-20, which recognized sergeants as "first line supervisors" who possess "the best opportunity to observe the conduct and appearance of employees and to detect those instances where disciplinary actions are warranted." General Order 96-20, Section III H 1.

For all these reasons, the Board's ruling regarding the sergeants' authority to discipline with independent judgement was clearly erroneous.

Authority to Reward and Promote

The Village also contends that the Board erred in concluding that the sergeants lacked the independent judgment to reward and promote subordinate officers under the Act. See 5 ILCS 315/3(r) (West 2010).

The record does not support the Board's finding. At the hearing, Lieutenant Cates testified at length regarding the sergeants' authority to reward or promote. Cates noted that sergeants can recommend officers for a letter of recognition, which letters are then included in the officers' personnel file and are a factor in determining assignments and promotions. Cates also testified that sergeants recommend officers to serve as field training officers, a position with higher pay. Cates specifically stated that the chief would not appoint an officer to this position without a recommendation from a sergeant.

There was also ample evidence in the record that sergeants recommended officers to serve special duty assignments, which allowed the officers to wear plain clothes, work a flexible schedule, and afforded them an opportunity to earn overtime pay. The strongest evidence of the sergeants' authority to use independent judgment in rewarding or promoting officers involved the sergeants' role in recommending officers to be assistant shift commanders (ASC). Cates testified that ASCs are appointed by the chief on the recommendation of the sergeant only. Although Birdsall testified about one incident where he recommended an officer to be as ASC and that recommendation was not followed, the evidence in the record indicates that the sergeants' recommendations in this area were followed in a majority of the cases.

For these reasons, we find that the Board's ruling that the sergeants did not use independent judgment in rewarding or promoting their subordinates, or effectively recommending such rewards or promotions, was clearly erroneous.

Authority to Adjust Grievances

Finally, the Village argues that the Board's finding that the sergeants did not possess the authority to adjust grievances with independent judgment was clear error. In its ruling, the Board held that while the collective bargaining agreement designates the sergeants as the first step in the grievance process, there was no evidence presented that the sergeants did anything more than pass the grievance up the chain of command.

Here, the Board's analysis is flawed. In *City of Freeport*, our supreme court held that in requiring the consistent use of independent judgment, the legislature was "clearly not referring to the number of times the alleged supervisor actually exercised his supervisory authority. Rather, the legislature was referring to the number of times in which independent judgment might be required in performing a particular supervisory function." *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 520-21 (1990).

Here, the Village established that the sergeants are identified as step one in the grievance process pursuant to section 5.2 of the collective bargaining agreement. Even though no evidence was presented that a grievance had been settled at step one, that does not undermine the sergeants' authority to use independent judgment in adjusting such grievances. The Board's finding otherwise was clearly erroneous.

Other Indicia of Authority to Supervise

In addition to satisfying all three prongs of the Act's definition of a supervisor, the Village's sergeants also possess other "indicia of authority" to supervise which adds credence to

the conclusion that they are supervisors. Specifically, Lieutenant Cates testified that for 118 hours, or 2/3 of the work week, the sergeants are the highest ranking individuals on duty at the department. If these sergeants are not supervisors, then the Oak Brook Police Department operates entirely without supervision a large part of the time, which is illogical. See *City of Freeport*, 135 Ill. 2d at 519; *City of Sandwich v. Illinois Labor Relations Board*, No 2–09–0800 & 2–09–0985 cons., slip op. at 8 (Ill. App. Jan. 11, 2011).

CONCLUSION

For the foregoing reasons, we hold that the Board's order that the sergeants were not supervisors as defined in the Act was clearly erroneous. See 5 ILCS 315/3(r) (West 2010). Therefore, the Board's order is reversed and the certification of representation is vacated.

Reversed and vacated.