

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Illinois State University,)	
)	
Employer)	
)	
and)	Case No. 2023-RS-0029-C
)	
American Federation of State, County,)	
and Municipal Employees, Council 31,)	
)	
Petitioner)	

OPINION AND ORDER

I. Statement of the Case

On April 30, 2023, American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a majority interest petition with the Illinois Educational Labor Relations Board (IELRB or Board) pursuant to Section 7 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.*, seeking to add employees of Illinois State University (University or Employer) in the title or classification of Food Court/Snack Bar Supervisory (snack bar supervisor) to its existing bargaining unit of employees.¹ There are approximately four persons employed in the petitioned-for title and approximately 321 employees in the existing unit. The Employer objected to the petition based on its contention that the petitioned-for title should not be included in the unit because it is supervisory within the meaning of Section 2(g) of the Act.

The parties appeared for a hearing before an Administrative Law Judge (ALJ). Following the hearing, the ALJ issued a Recommended Decision and Order (ALJRDO) finding that the persons employed in the petitioned-for title are not supervisors within the meaning of the Act and accordingly are not excluded from collective bargaining. The Employer filed exceptions to

¹ The parties jointly waived the 120-day time limit in Section 7 of the Act for the Board to ascertain the employees' choice of representative or, if a hearing is necessary, to resolve any issues of representation. The waiver extended the time period until December 26, 2023. The parties jointly waived the time limit a second time, agreeing to extend the time period until March 26, 2024. The parties' third and final waiver extends the time period to June 24, 2024.

the ALJRDO and the Union filed a response to exceptions. For the reasons discussed below, we affirm the ALJRDO.

II. Factual Background

We adopt the facts as set forth in the underlying ALJRDO. Because the ALJRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except where necessary to assist the reader.

III. Discussion

Section 3 of the Act gives educational employees the right to organize for purposes of collective bargaining with educational employers. Section 2(b) of the Act excludes supervisory employees from the definition of educational employee. The ALJ found that the petitioned-for employees are not supervisors within the meaning of Section 2(g) of the Act, and therefore are not excluded from collective bargaining. Supervisory employees are described in Section 2(g) of the Act as:

[A]ny individual having authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit and adjust their grievances, or to effectively recommend such action if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. The term ... includes only those individuals who devote a preponderance of their employment time to such exercising authority.

An educational employee will be deemed a supervisor within the meaning of the Act if they (1) have the authority to perform some of the following supervisory functions in the interest of the Employer, or to effectively recommend such action: hire, transfer, suspend, lay off, recall, promote, discharge, direct, assign, reward, or discipline other employees and adjust their grievances, or to effectively recommend any such action using independent judgment; (2) use independent judgment in the interest of the employer in connection with their supervisory activity; and (3) spend a preponderance of their time exercising supervisory functions. 115 ILCS 5/2(b); *Board of Trustees of University of Illinois v. IELRB*, 235 Ill. App. 3d 709, 600 N.E.2d 1292 (4th Dist. 1992).

The University asserts in its exceptions that the ALJ incorrectly stated that the inquiry in determining supervisory status was limited to whether the petitioned-for employees had authority to perform supervisory functions or to effectively recommend such performance over

other employees *within* the bargaining unit. That is, the ALJ found that the petitioned-for employees did not exercise supervisory authority over the snack bar attendants. The University claims that supervisory authority over non-bargaining unit personnel is relevant to determining supervisory status, and thus the ALJ should have analyzed whether the petitioned-for employees exercise supervisory authority over non-bargaining unit student workers. It offers *Chicago Principals Association v. IELRB*, 187 Ill. App. 3d 64, 543 N.E.2d 166 (1st Dist. 1989) and *Board of Trustees of the University of Illinois*, 33 PERI 73, Case No. 2016-RS-0006-C (IELRB Opinion and Order, December 15, 2016), *rev'd on other grounds*, 2018 IL App (4th) 170059, in support of its claim. Yet the Act itself defines a supervisor in Section 2(g) as “any individual having authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit.” (Emphasis added.)

In *Chicago Principals Association*, the Court affirmed the IELRB’s determination that the petitioned-for principal position was supervisory within the meaning of the Act where it exercised supervisory authority over employees outside of the petitioned for unit. But in 2023 the definition of educational employee in Section 2(b) of the Act was amended as it applies to employees of the Chicago Board of Education to include supervisors unless the supervisor is also a manager² and Section 2(o) of the Act was amended so that the definition of managerial employee is different for employees of the Chicago Board of Education than for employees of

² The changes made to Section 2(b) by Public Act 102-1138 are underlined:

“Educational employee” or “employee” means any individual, excluding supervisors, managerial, confidential, short term employees, student, and part-time academic employees of community colleges employed full or part time by an educational employer, but shall not include elected officials and appointees of the Governor with the advice and consent of the Senate, firefighters as defined by subsection (g-1) of Section 3 of the Illinois Public Labor Relations Act, and peace officers employed by a State university. However, with respect to an educational employer of a school district organized under Article 34 of the School Code, a supervisor shall be considered an educational employee under this definition unless the supervisor is also a managerial employee. For the purposes of this Act, part-time academic employees of community colleges shall be defined as those employees who provide less than 3 credit hours of instruction per academic semester. In this subsection (b), the term “student” does not include graduate students who are research assistants primarily performing duties that involve research, graduate assistants primarily performing duties that are pre-professional, graduate students who are teaching assistants primarily performing duties that involve the delivery and support of instruction, or any other graduate assistants.

other educational employers.³ Public Act 102-1138. As a result, the holding in *Chicago Principals Association* on the supervisory exclusion is no longer applicable to the position at issue in that very case. In fact, after the Act was amended, the Chicago Principals & Administrators Association, Local 2 of the American Federation of School Administrators filed a representation petition with the IELRB and was subsequently certified as the exclusive representative of those employees.

In *University of Illinois*, relying on *Chicago Principals Association*, the IELRB stated that authority to perform supervisory functions over other employees outside of the bargaining unit was relevant in determining supervisory status. 33 PERI 73. We find the Union's suggestion that the decisions in *University of Illinois* and *Chicago Principals Association* were influenced by the type of employees at issue, school principals and university department chairs, compelling. In contrast to school principals and university department chairs, the petitioned-for employees in this case are hourly employees who are front-line workers working in food court venues under the direction of multiple levels of supervisors, including three levels of administrators, who oversee the food court venues and who in turn report to a senior assistant director of retail and residential dining, who oversees all of the food court dining venues, and who in turn reports to the associate director of retail and residential dining, who in turn reports to the director of the University's Event Management Dining and Hospitality department. Transcript of proceedings before the ALJ at pages 19-30, 23-24, 36-37, 41.

Given the clear wording of Section 2(g) to limit the inquiry to supervisory authority over other employees within the unit, the tenuous reliability of *Chicago Principals Association* post Public Act 102-1138, and the distinguishability of the petitioned-for employees from school

³ The changes made to Section 2(o) by Public Act 102-1138 are underlined:

(o) "Managerial employee" means, with respect to an educational employer other than an educational employer of a school district organized under Article 34 of the School Code, an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of such management policies and practices or, with respect to an educational employer of a school district organized under Article 34 of the School Code, an individual who has a significant role in the negotiation of collective bargaining agreements or who formulates and determines employer-wide management policies and practices. "Managerial employee" includes a general superintendent of schools provided for under Section 34-6 of the School Code.

principals and university department chairs, we decline to follow *University of Illinois* with regard to the relevance of supervisory functions over other employees outside of the bargaining unit and find that the ALJ correctly limited the inquiry as to whether the snack bar supervisors have supervisory authority over employees within the petitioned-for unit. Even if we were to apply *Chicago Principals Association* here, for the reasons discussed below, the record does not indicate that the petitioned-for employees exercise supervisory authority over student workers.

The University argues that the ALJ erred when he concluded that the petitioned-for employees lack the supervisory authority to perform or recommend performance of any one or more supervisory function. The University complains that while the ALJ declined to consider in his conclusion the supervisory functions of assignment and direction of work, he seemingly conceded that they exercised a “negligible amount” of supervisory authority to assign and direct snack bar attendants. In the same vein, the University offers that because snack bar supervisors Cisco, Osborne and Schoenbrun check on and monitor snack bar attendants and student workers to some extent, they are supervisory within the meaning of the Act. The University’s argument on this is misleading. On page 11 of the ALJRDO, the ALJ states that the petitioned-for employees “devote a negligible amount of their employment time to overseeing snack bar attendants, assigning responsibilities to snack bar attendants, or directing them to perform tasks.” The ALJ goes on to report that the petitioned-for employees spent between less than five and ten percent of their time performing these functions. Only employees who devote a preponderance of their employment time exercising supervisory authority are considered supervisory employees within the meaning of the Act. The ALJ not only considered the petitioned-for employees’ authority to direct and assign work, but he also acknowledged the authority they had to do so, and that the amount did not meet the preponderance of their employment time required by the statute to render them supervisory.

The University excepts to the ALJ’s finding that the record did not establish that the snack bar supervisor exercised independent judgment in the interest of the University engaging in supervisory functions. This was based on the ALJ’s determination that there was no record evidence that the snack bar supervisor actually engaged in supervisory activity. Without supervisory authority, there cannot be any independent judgment to exercise such supervisory authority.

The University excepts to the ALJ's statement that a party has the burden of proving a statutory exclusion through specific examples of alleged statutory authority. According to the University, as long as the alleged supervisor possesses supervisory authority, specific examples of when they exercised that authority are unnecessary. Statutory exclusions are narrowly interpreted because the result of a finding of supervisory status prevents employees from "exercising the full panoply of rights otherwise guaranteed to them by the Act." *Board of Educ. of Community Consol. High Sch. Dist. No. 230 v. IELRB*, 165 Ill. App. 3d 41, 518 N.E.2d 713 (4th Dist. 1987). As the party seeking to exclude the employees in the petitioned-for title from exercising the right to collectively bargain pursuant to the Act, the University has the burden of proving that the title is supervisory within the meaning of the Act. *Niles Township High Sch. Dist. 219 v. Illinois Educational Labor Relations Board*, 387 Ill. App. 3d 58, 69, 900 N.E.2d 700, 709 (1st Dist. 2008); *Southern Illinois University Board of Trustees*, 5 PERI 1197, Case Nos. 85-RC-0022-S et. al. (IELRB Opinion and Order, September 30, 1988). A party asserting a statutory exclusion cannot satisfy its burden of proof by relying on vague, generalized testimony or contentions as to an employee's job function. *Village of Bolingbrook*, 19 PERI ¶125 (IL SLRB 2003).

Generally, labor boards require parties to present specific examples of alleged supervisory authority to prove the exclusion. *County of Union*, 20 PERI ¶9 (IL SLRB 2003); *Quadcom Public Safety Communications System*, 12 PERI ¶2017 (IL SLRB 1996), *aff'd by unpub. order*, 13 PERI ¶4011 (Ill. App. Ct., 2nd Dist., 1997). However, there is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof that an employee meets the Illinois Public Labor Relations Act's definition of supervisor. See 5 ILCS 315/3(r). For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty in a manner that impacts employees' terms and conditions of employment. *Village of Maryville v. ILRB*, 402 Ill. App. 3d 369, 374-5, 932 N.E.2d 558 (5th Dist. 2010); *see also Illinois Department of Central Management Services v. Illinois Labor Relations Board, State Panel*, 2011 IL App 4th 090966 (discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); *but see Illinois Department of Central Management Services v. Illinois Labor Relations Board, State Panel*, 382 Ill. App. 3d 208, 228-29, 888 N.E.2d 562 (4th Dist. 2008) (finding that, although job

description purported to give authority to alleged supervisors, these alleged supervisors did not “in practice” have significant discretionary authority to affect subordinates’ employment). The First and Third districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that rules and regulations or job descriptions, while important, are not alone sufficient to meet the burden of proof. See *Village of Broadview v. ILRB*, 402 Ill. App. 3d 503, 508-9, 932 N.E.2d 25 (1st Dist. 2010); cf. *City of Peru v. ISLRB*, 167 Ill. App. 3d 284, 291, 521 N.E.2d 108 (3rd Dist. 1988).

The cases cited by the University for its contention that specific examples are unnecessary to establish a petitioned-for position is a statutory supervisor are distinguishable because they either involve police employment (*Maryville*, 402 Ill. App. 3d 369 (sergeant ranked police officers); *Peru*, 167 Ill. App. 3d 284 (police lieutenants and sergeants)) or the statutory exclusion alleged was managerial rather than supervisory (*County of Will*, 34 PERI ¶91 (IL LRB - LP 2017)). The definition of a supervisor within the meaning of Section 3(r) of the IPLRA provides that “[e]xcept with respect to police employment, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising that authority.” Thus, the preponderance of time requirement does not apply to supervisors in police employment, such as the petitioned for employees in the cases cited by the University. When there is no need to prove the preponderance requirement, some Courts have found the existence of authority itself is enough to meet the 3(r) requirement. But the burden is higher under Section 2(g) of the IELRA than for police employees under Section 3(r) of the IPLRA, and preponderance of time necessitates actual exercise of the authority.

The University excepts to the ALJ’s statement that snack bar supervisor Schoenbrun “[i]n general, does not assign work to” snack bar attendants Mattson or Mayr, when Schoenbrun did not testify that she does not assign work. Yet nothing in the record indicates that Schoenbrun assigns work.

The University argues that the ALJ incorrectly found that snack bar supervisor Stevenson spends only 40% of his employment time performing supervisory functions, and that the ALJ should have found Stevenson spends 92% of his employment time performing supervisory functions. The University’s conclusion is based on Stevenson’s testimony that he did not mean that he was not looking at, watching, or observing student workers and snack bar attendants

during the remaining 60% of his day, and that he will check on them often. Even assuming, arguendo, that looking at, watching, observing, and checking on amounted to supervisory authority, there is nothing in the record to substantiate the University's claim that it accounts for an additional 52% of Stevenson's work time. What is more, there is nothing to indicate that it accounts for even the additional 11% that could meet the preponderance requirement necessary for supervisory status.

The University's exceptions to the ALJ's findings that snack bar attendants guide student workers and that only administrators exercise supervisory authority are irrelevant to the Board's determination and do not need to be addressed here because the petition seeks only to include the snack bar supervisor position.

The University raises nothing in its exceptions to upset the Administrative Law Judge's finding that the snack bar supervisors are not supervisors within the meaning of Section 2(g) of the Act and are not excluded from collective bargaining.

IV. Order

We find that the petitioned-for unit is appropriate under Section 7 of the Act. The ALJRDO is affirmed and the matter is remanded to the Executive Director to process the petition in accordance with this opinion and order.

V. Right to Appeal

This Opinion and Order is not a final order of the Illinois Educational Labor Relations Board subject to appeal. Under Section 7(d) of the Act, "[a]n order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining representative of employees in the bargaining unit, is a final order." Pursuant Section 7(d) of the Act, aggrieved parties may seek judicial review of this Opinion and Order in accordance with the provisions of the Administrative Review Law upon the issuance of the Board's certification order through the Executive Director. Section 7(d)

also provides that such review must be taken directly to the Appellate Court of a judicial district in which the Board maintains an office (Chicago or Springfield), and that “[a]ny direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.” The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **June 18, 2024**

Issued: **June 18, 2024**

/s/ Lara D. Shayne
Lara D. Shayne, Chairman

/s/ Steve Grossman
Steve Grossman, Member

/s/ Chad D. Hays
Chad D. Hays, Member

/s/ Michelle Ishmael
Michelle Ishmael, Member

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STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

American Federation of State, County,
and Municipal Employees, Council 31,

Petitioner

and

Illinois State University,

Employer

Case No. 2023-RS-0029-C

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

Petitioner, American Federation of State, County, and Municipal Employees, Council 31 (Union), filed a petition with the Illinois Educational Labor Relations Board (Board) on April 30, 2023, seeking pursuant to a showing of majority interest, to represent the persons employed by Illinois State University (University), in the title or classification of Food Court/Snack Bar Supervisor, in its existing bargaining unit of approximately 321 employees in various job titles and classifications. The four petitioned-for employees are currently unrepresented for purposes of collective bargaining. The University opposed the petition, asserting that the employees sought therein are excluded from coverage under the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.*, pursuant to the exemption for statutory supervisors.

The hearing in this matter was conducted on WebEx, before the undersigned, on October 23 and 24, 2023, and December 7, 2023, pursuant to Section 1110.105 of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135. Both parties were afforded and took advantage of an opportunity to file post-hearing briefs by February 2, 2024.¹

II. ISSUES AND CONTENTIONS

Petitioner: The Union seeks to represent in its current bargaining unit of culinary workers and groundskeepers, the persons employed by the University in the title or classification of Food Court/Snack Bar Supervisor. The Union asserts the petitioned-for employees are educational employees as defined by the Act, and are thus, entitled to seek representation by the Union.

¹Pursuant to Section 7(c-5) of the Act and Section 1110.105 of the Rules the Union and University thrice executed limited waivers of the Board's obligation in the above-captioned case, to ascertain the petitioned-for employees' choice of labor organization within 120 days of the filing of the instant majority interest petition, and to commence a hearing within 30 days of service of the petition. The parties' most recent waiver extends the deadline to June 24, 2024.

Employer: The University opposes the Union's petition, asserting the employees in the petitioned-for title are supervisors within the meaning of Section 2(g) of the Act and therefore, must be excluded from bargaining under Sections 2(b) and 3 of the Act.

III. FINDINGS OF FACT

The parties stipulated and I find as follows:

1. At all times material, Illinois State University was an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board.
2. At all times material, American Federation of State, County, and Municipal Employees, Council 31, was a labor organization within the meaning of Section 2(c) of the Act.
3. On February 8, 2017, in American Federation of State, County, and Municipal Employees, Council 31/Illinois State University, Case No. 2017-RS-0004-C, the Board certified the Union as the exclusive representative of a bargaining unit of persons employed by the University, as follows:

Included: Culinary Worker II, Culinary Worker II Intern, Culinary Worker III, Culinary Worker III Intern, Culinary Worker IV, Culinary Worker V; Food Court/Snack Bar Attendant, Food Court/Snack Bar Attendant Intern; Food Service Sanitation Laborer; Food Service Stores Laborer; Locker Room Attendant; Cash Register Operator; Cash Register Supervisor; Dishroom Supervisor; Laundry Worker; Athletic Turf Specialist; Greens Worker; Grounds Worker, Grounds Worker Intern; Grounds Equipment Mechanic; Equipment Service Worker; Building Service Worker, Building Service Worker Intern; Automotive Technician; Dining Room Supervisor; Tree Surgeon; Grounds Gardener; Nursery Worker.

Excluded: All supervisory, managerial, and/or confidential employees as defined in Section 2 of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.*

See Joint Exhibit 1. The foregoing is the most recent certification for this bargaining unit. See hearing transcript at pages 286-87.

4. At all times material, the Union and University have been parties to a collective bargaining agreement (CBA) for the unit referenced in paragraph 3, with a term from July 1, 2021 to June 30, 2025. See Joint Exhibit 2.
5. Union Exhibit 1 is a copy of the job description for bargaining unit employees in the job title or classification of Food Court/Snack Bar Attendant (Retail Dining Associate).
6. Union Exhibit 2 is a copy of the Retail Dining Associate bid list, indicating various Food Court/Snack Bar Attendant work locations and work schedules for August 2023 through May 2024.

On the basis of the testimony of the witnesses, my observation of their demeanors, and the documentary evidence in the record, I make the following additional findings of fact:

Illinois State University is located in Normal, Illinois, approximately 130 miles southwest of Chicago.² Tr. 15. The University employs roughly 6,800 persons on the Normal campus, including student workers, and approximately 20,000 students attend school there. Id.

The University's Event Management Dining and Hospitality department (EMDH) operates eight retail dining venues on its Normal campus as follows: Qdoba Mexican Grill in the Bone Student Center; The Landing in the Bone Student Center; Starbucks in the Bone Student Center (Bone Starbucks); Timbers Grill in the Bone Student Center; McAlister's Deli in the Bone Student Center; Student Fitness Center Starbucks; Business Bistro in the University's College of Business; University High School Student Concession Stand. Tr. 16-17. All of the University's dining venues are open to faculty, students, and staff. Tr. 16-17. Likewise, all are open to the general public, except for the University High School Student Concession Stand. Tr. 16.

The director of EMDH is Bill Legett. Univ. Ex. A. Reporting to Legett is the associate director of retail and residential dining, Jennifer Brandel. Tr. 19; Univ. Ex. A. Reporting to Brandel is the senior assistant director of retail operations, Heather Berrocales. Tr. 19-20; Univ. Ex. A. Berrocales oversees the eight retail dining venues listed above. Tr. 19-20; Univ. Ex. A. Reporting to Berrocales are three employees in the job title or classification of Administrator III, who assist Berrocales with oversight of the eight retail dining venues. Tr. 25; Univ. Ex. A.

Below the Administrators III, there are employees assigned to each of the eight venues, in the following job titles or classifications: Administrator II; Administrator I; Snack Bar Supervisor; Snack Bar Attendant; student worker. There are five employees in the Administrator II title, six employees in the Administrator I title, four employees in the Snack Bar Supervisor title, thirteen employees in the Snack Bar Attendant title, and approximately 300 student workers. Tr. 23-26; Univ. Ex. A. The Snack Bar Supervisor title is above the Snack Bar Attendant title, and the Snack Bar Attendant title is above the student workers. Tr. 23. The employees in the Snack Bar Attendant title are full-time employees, earn approximately \$15.64 an hour, and are included in the bargaining unit set out above, certified in Case No. 2017-RS-0004-C. Tr. 24, 26, 42, 287; Jt. Ex. 1, 2.

Among the approximately 300 student workers, each year there are approximately eight to ten student managers, who are responsible for overseeing their shift in the same manner as the employees in

²Reference to exhibits in this matter will be as follows: Union exhibits, "Un. Ex. ____"; University exhibits, "Univ. Ex. ____"; Joint exhibits, "Jt. Ex. ____." References to the transcript of proceedings will be "Tr. ____."

the Snack Bar Supervisor title. Tr. 156, 158. Student workers earn about \$13.50 an hour, student managers earn about \$16.85 an hour, and snack bar supervisors earn \$17.85 an hour. Tr. 25, 42, 155-56. The eight retail dining venues, as needed, make use of "extra help employees" who are part-time employees, limited in the number of hours they are allowed to work, and receive no benefits. Tr. 119. Other than the snack bar attendants, none of the employees in the retail dining section of EMDH are represented for purposes of collective bargaining. Tr. 287.

The snack bar supervisors are full-time employees, scheduled eight hours *per* workday, with a one-half hour unpaid lunch and two paid 15-minute breaks. Tr. 44, 185. The four employees in the Snack Bar Supervisor title are Michael Stevenson, Jacob Cisco, Breana Osborne, and Jessica Schoenbrun. Tr. 39-40; Univ. Ex. B1, B2, B3, B4. Stevenson works at the McAlister's Deli in the Bone Student Center, and Cisco, Osborne, and Schoenbrun work at the Bone Starbucks. Tr. 43. The snack bar supervisors' assignments are not permanent, and Berrocales or others administrators at EMDH may move them to other venues to learn how they operate or simply because their skills are needed elsewhere. Tr. 43-44. The snack bar supervisors report to the administrator over the venue to which they are assigned. Tr. 41.

Ashleigh Weller is in the Administrator II title and oversees the Bone Starbucks. Tr. 111, 138-39; Univ. Ex. A. Lisa Mayr is in the Administrator I title and oversees the Student Fitness Center Starbucks; she is present at all times while the venue is open. Tr. 134-35, 181-82; Univ. Ex. A. Amanda Goggin is in the Administrator II title and oversees Timbers Grill in the Bone Student Center, along with Caranda Bevins, Nada Ingole, and Samira Bezzaz, who are all in the Administrator I title, and as a result, there is always an administrator present when Timbers Grill is open. Tr. 134; Univ. Ex. A. Megan Mundell is in the Administrator II title and oversees the Business Bistro in the University's College of Business and the University High School Student Concession Stand. Tr. 134; Univ. Ex. A. Tr. 133; Univ. Ex. A. When Mundell is unable to be at one or both of the venues she oversees, either a snack bar attendant or a student worker fills in for her. Tr. 133-34. Emy Smith is in the Administrator II title and oversees the Qdoba Mexican Grill in the Bone Student Center, along with Sara Hill, who is in the Administrator I title. Tr. 130-31; Univ. Ex. A. When neither Smith nor Hill are able to be in the venue, either a snack bar attendant or a student manager fills in. Tr. 131. Lindsey Thompson is in the Administrator II title and oversees McAlister's Deli in the Bone Student Center. Tr. 129; Univ. Ex. A. Abigail Herberger is in the Administrator I title and oversees The Landing in the Bone Student Center. Tr. 32; Univ. Ex. A.

At the Bone Starbucks, in addition to the administrator, Weller, and the three snack bar supervisors, Cisco, Osborne, and Schoenbrun, it is staffed with two snack bar attendants and approximately 80 student employees. Tr. 36, 492. The McAlister's Deli in the Bone Student Center, in addition to the administrator, Thompson, and one snack bar supervisor, Stevenson, is staffed with two snack bar attendants and approximately 70 student employees. Tr. 37. These are the only two venues which currently employ both snack bar supervisors and snack bar attendants. Tr. 39-40, 43, 130.

As noted, the snack bar attendants are full-time employees and members of the bargaining unit set out above. Tr. 24, 26, 287, 442-443, 495-496; Jt. Ex. 1, 2. Their terms and conditions of employment are governed by a collective bargaining agreement between the Union and the University. Tr. 24, 26-27, 42, 287; Jt. Ex. 1, 2. In May of each year, pursuant to the CBA, the snack bar attendants, bid on their shifts and the venues at which they will work for the following year. Tr. 122-123, 287-288; Jt. Ex. 2 at pp.11-14. Eight of the thirteen snack bar attendants work in venues where no snack bar supervisors are assigned. Tr. 135. Snack bar attendants' overtime provisions are likewise covered by the CBA. Tr. 288-289; Jt. Ex. 2 at p. 27.

Snack bar attendants' supervisors are the administrator or administrators overseeing the venue at which they work. Tr. 126-130. Correspondingly, snack bar attendants' performance evaluations are prepared by the administrator or administrators who supervise them. Tr. 124, 149-150, 298. Snack bar supervisors have no input or role in the snack bar attendants' performance evaluations. Tr. 124, 298-299, 363, 445, 496. Likewise, snack bar supervisors have no authority to layoff or recall snack bar attendants. Tr. 370-71. Both snack bar attendants and snack bar supervisors are responsible for guiding and assisting the student workers in their venue, with the goal of operating the venue in the proper, established manner. Tr.391-394. Snack bar supervisors have no authority to call snack bar attendants into work before their shifts, or to send them home prior to the end thereof. Tr. 123-124, 310, 481, 496.

Snack bar supervisors have no authority to recommend or issue discipline to snack bar attendants, but rather, are limited to making an initial report of facts or conduct they have observed to an administrator, who then completes a form, including the reported facts or conduct, and submits it up the chain of command for an EMDH human resources employee to determine whether a pre-disciplinary meeting should be held, in which case there is an investigation of the facts or conduct and a determination as to whether they warrant discipline. Tr. 142-144, 298, 336-337, 347, 369, 440-442, 494-495, 507. Such initial reports of facts or conduct may also be made by an administrator, snack bar attendant, student manager, or a student worker. Tr. 142-144, 517.

As noted, the University employs approximately 300 student workers in its eight retail dining venues. Tr. 23. Student workers are not members of the bargaining unit set out above, nor are they otherwise represented for purposes of collective bargaining. Tr. 287. Student workers are limited to a maximum of 28 hours of work each week, and their shifts are usually between two and five hours in length. Tr. 251-252. Given their relatively short shifts, on a daily basis, many student workers rotate through the venues where most are employed. Tr. 250-251. For example, at the Bone Starbucks, on a daily basis, 30-45 student workers will rotate through the venue, to work their shifts. Tr. 250-252. As a result, due to the daily rotational turnover, and the turnover each semester because experienced student workers leave and are replaced by new student workers, snack bar supervisors devote significantly more attention to observing, monitoring, training, and correcting student workers than to snack bar attendants who are well versed in their roles, so much so, they also act as guides or lead workers for the student workers in their venue. Tr. 51, 251-253, 348, 391-394, 477-478. Snack bar supervisors do not have a role in scheduling student workers work, nor access to the student scheduling system. Tr. 299, 500.

Administrators, snack bar supervisors, and student managers have the authority to issue student workers written infraction forms. Tr. 137-138, 155, 222, 233-234, 301, 313-314, 369, 452-453. Generally, snack bar supervisors issue infractions to students because of attendance issues, cash register discrepancies of more than five dollars, or less frequently, behavioral problems. Tr. 229, 233-234, 301, 313, 349, 368, 452, 454-455, 498, 509-511; Univ. Ex. C. After a snack bar supervisors and student managers fill out infraction forms, they leave them in a folder for the administrator. Tr. 301, 498, 368-369, 423. Should a student accumulate an excessive number of written infractions, an administrator or someone in the EMDH human resources department may terminate the student's employment. Tr. 228-229; Univ. Ex. C.

As indicated above, Stevenson is the sole snack bar supervisor assigned to the McAlister's Deli in the Bone Student Center. Tr. 37, 296. Stevenson works Monday through Friday, from 1:00 p.m. to 9:00 p.m., while the McAlister administrator, Thompson, and the two McAlister snack bar attendants work at the venue Monday through Friday, from 7:00 a.m. to 3:00 p.m. Tr. 293-297. At McAlister's, Stevenson spends the majority of his work day performing tasks similar to those performed by snack bar attendants and student workers assigned to the venue. Tr. 311, 314. Such duties include making sandwiches, dealing with customers' issues, operating the cash register, delivering orders to tables, clearing tables after customers depart, and cleaning throughout the venue. Tr. 311, 314. In addition, Stevenson monitors the snack bar attendants and student workers to ensure they are properly carrying out their assigned tasks, moves snack bar attendants and student workers to new assignments to meet the needs of the venue,

weighs-out sliced portions of sandwich meat for use by his and other shifts, double-checks student workers' end-of-shift counts of their money drawers, and reconciles receipts of the various payment methods accepted by the venue, to ensure the totals thereon match the funds actually received. Tr. 312-314. Because Stevenson's shift overlaps only the last two hours of the snack bar attendants' workday, his interactions with them are necessarily somewhat limited. Tr. 293-297, 318-319. In general, Stevenson does not assign work to the snack bar attendants, or move them from the work stations they were on at the start of his shift. Tr. 297-298. However, occasionally, as demanded by circumstances, Stevenson will direct a snack bar attendant to work at a different station in the venue. Tr. 311-312, 319-320. Overall, Stevenson spends approximately five percent of his worktime to monitoring, overseeing, and correcting the work of the snack bar attendants, and approximately 35 percent of his worktime, training, monitoring, overseeing, and correcting the work of student workers. Tr. 252-253, 315, 343-344.

At the Bone Starbucks, in addition to the administrator, Weller, and the three snack bar supervisors, Cisco, Osborne, and Schoenbrun, it is staffed with two snack bar attendants and approximately 80 student employees. Tr. 36, 352-53, 492. Cisco works Tuesday through Friday, from 7:00 a.m. to 3:00 p.m. and Saturday, from 12:00 noon to 8:00 p.m. Tr. 353. However, during Cisco's shifts, no snack bar attendants work at his venue during the hours he works, and as a result, he has no opportunity to work with snack bar attendants. Tr. 354, 356. Instead, Cisco works with another snack bar supervisor, Schoenbrun, for six hours of his shift, and 12-15 student workers who are on and off at different times during his eight hour shift. Tr. 355-356. For most of the 2022-2023 academic year, Cisco worked at the Student Fitness Center Starbucks, at which time he worked with Peighton Gill, the sole snack bar attendant assigned to the venue at the time. Tr. 417-418. While working with Gill, Cisco spent less than five percent of his worktime to monitoring, overseeing, and correcting Gill's work. Tr. 418.

Either Weller or a student manager, Lyssa Madden, opens the Bone Starbucks each day. Tr. 356. Likewise, either Weller or Madden generally fills out the chart, assigning student workers to their work stations for the day, but occasionally, Cisco will complete the task. Tr. 357. Thereafter, throughout the shifts, Weller, Madden, Cisco, or another snack bar supervisor might move student workers to different stations as circumstances demand, but in general, whomever is filling out the chart attempts to place student workers at a station such that they will not later have to be moved. Tr. 357-358. For the first couple of hours of his shifts, Cisco operates the oven, heating and packaging various food products sold by the venue. Tr. 362. During the remainder of his shifts, Cisco generally works in the back of the venue, restocking depleted inventory and preparing products for later use, but if circumstances demand, he will work other stations in the venue. Tr. 362-363.

Osborne works at the Bone Starbucks Monday through Thursday, from 3:00 p.m. to 11:00 p.m. and Friday, from 10:00 a.m. to 6:00 p.m. Tr. 437-438. Osborne's work schedule only overlaps with one of the two snack bar attendants assigned to the Bone Starbucks, Katrina Mattson. Tr. 439-440. Mattson generally works in the back of the venue, on customer support, bake, and prep work. Tr. 440. Osborne spends the majority of her work day performing tasks similar to those performed by the student workers assigned to the venue, including dealing with customers' issues, operating the cash register, making drinks, cleaning counters, pulling pastries, and washing dishes. Tr. 451. In general, throughout the day, she assists wherever extra help is needed. Tr. 451, 481. Osborne also spends a little more than half her shifts working in the back of the venue, restocking depleted inventory, double-checking student workers' end-of-shift counts of their money drawers, and reconciling receipts of the various payment methods accepted by the venue, to ensure the totals thereon match the funds actually received. Tr. 452-453. In general, Osborne does not assign work to Mattson, but occasionally, as demanded by circumstances, she will direct Mattson to help at a station which is particularly busy and needs assistance. Tr. 477, 479. Overall, in the course of performing the various tasks for which Osborne is responsible, she spends approximately five percent of her worktime on monitoring and observing the work of the snack bar attendant, and more than 50 percent of her worktime, monitoring and overseeing the work of student workers. Tr. 456, 477-478 482.

Schoenbrun works at the Bone Starbucks Monday through Thursday, from 9:00 a.m. to 5:00 p.m. and Friday, from 1:00 p.m. to 9:00 p.m. Tr. 491. Schoenbrun's work schedule overlaps with both of the snack bar attendants assigned to the Bone Starbucks, Mattson and Kayla Mayr. Tr. 439, 492-493. Mattson works Sunday through Thursday, from 3:00 p.m. to 11:00 p.m. and Mayr works Tuesday through Friday, from 6:00 a.m. to 2:00 p.m. and Saturday, from 8:00 a.m. to 4:00 p.m. Tr. 439, 492-493. Schoenbrun's shifts thus overlap Mattson's shifts by approximately two hours each day, Monday through Thursday, and Mayr's shifts by approximately five hours each day, Tuesday through Thursday, and by approximately one hour on Friday. Tr. 439, 492-493. As indicated above, Schoenbrun's shifts overlap Cisco's shifts by approximately six hours each day, Tuesday through Thursday. Tr. 354, 491. Schoenbrun's shifts overlap Osborne's shifts by approximately two hours each day, Monday through Thursday, and by approximately five hours on Friday. Tr. 437-438, 491. Like Cisco and Osborne, Schoenbrun works with a number of student workers who are on and off at different times during her shifts. Tr. 497, 514-515.

Schoenbrun generally works in the front of the venue, helping out at the various work stations, performing tasks similar to those performed by the student workers assigned to the venue, including

dealing with customers' issues, operating the cash register, making drinks, and cleaning counters. Tr. 502, 506, 513-514, 518-519. The remainder of Schoenbrun's work time is in the back of the venue, restocking depleted inventory. Tr. 502. In general, Schoenbrun does not assign work to Mattson or Mayr, but occasionally, as demanded by circumstances, she will direct Mayr to help at a station which is particularly busy and needs assistance. Tr. 493-494. Overall, in the course of performing the various tasks for which Schoenbrun is responsible, she spends approximately ten percent of her worktime on monitoring and observing the work of the snack bar attendants, and slightly more than 50 percent of her worktime, monitoring and overseeing the work of student workers. Tr. 516.

IV. DISCUSSION AND ANALYSIS

As noted above, the Union seeks to represent all persons employed by the University in the title or classification of Food Court/Snack Bar Supervisor, in its existing bargaining unit of approximately 321 employees in various job titles and classifications. It asserts the four petitioned-for employees are educational employees as defined by the Act, and are thus, entitled to seek representation by the Union. The University opposes the Union's petition, asserting that the employees in the petitioned-for title are supervisors within the meaning of Section 2(g) of the Act, and therefore must be excluded from bargaining under Sections 2(b) and 3 of the Act.

In representation cases, the party which seeks to exclude an individual or title from a proposed bargaining unit has the burden of proving the statutory exclusion through specific examples of the alleged supervisory authority. Southern Illinois University Board of Trustees, 5 PERI ¶1197, 1988 WL 1588755 (IELRB 1988); County of Union, 20 PERI ¶9, fn 2, 2003 WL 26067455, fn 2, (IL LRB-SP 2003); Quadcom Public Safety Communications System, 12 PERI ¶2017, 1996 WL 34548011 (IL SLRB 1996), aff'd by unpub. order, 13 PERI ¶4011, 1997 WL 34820317 (1997). However, the Act was intended to extend bargaining rights broadly, and thus, its exemptions are narrowly construed. Community Consolidated High School District No. 230 v. Illinois Educational Labor Relations Board, 165 Ill. App. 3d 41, 518 N.E.2d 713 (4th Dist. 1987); City of Decatur v. AFSCME Local 268, 122 Ill. 2d 353, 522 N.E.2d 1219 (1988); County of Kane v. Carlson, 116 Ill. 2d 186, 507 N.E.2d 482 (1987). As in all such cases, the duties of the employees at issue determine whether they are so precluded.

The University contends the snack bar supervisors petitioned-for herein are supervisors within the meaning of Section 2(g) of the Act. Section 2(g) of the Act provides as follows:

"Supervisor" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees within the appropriate bargaining unit and adjust their grievances, or to effectively recommend such action if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. The term

"supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

Section 2(b) of the Act excludes "supervisors" from the definition of "educational employee", while Section 3 of the Act grants "educational employees" the right to engage in collective bargaining.

Based on the foregoing, an individual will be deemed a supervisor within the meaning of the Act, if he or she (1) has authority to perform one or more of the enumerated supervisory functions, or to effectively recommend such performance, with regard to other employees within the appropriate bargaining unit; (2) exercises independent judgment in the interest of the employer in connection with his or her supervisory activity; and (3) spends a preponderance of his or her employment time engaged in supervisory activities. Board of Trustees of University of Illinois v. Illinois Educational Labor Relations Board, 235 Ill. App. 3d 709, 600 N.E.2d 1292, 8 PERI ¶4021, 1992 WL 12647454 (4th Dist. 1992); Chicago Principals Association, Local 2 v. Illinois Educational Labor Relations Board, 187 Ill. App. 3d 64, 543 N.E.2d 166, 5 PERI ¶4025, 1989 WL 1700915 (4th Dist. 1989); Southern Illinois University Board of Trustees, 4 PERI ¶1030, 1987 WL 1435348 (IELRB, 1987). In Southern Illinois University Board of Trustees, the Board determined "preponderance of employment time" means "a majority of the time." 4 PERI ¶1030 at p. IX-121; See also, Southern Illinois University Board of Trustees, 5 PERI ¶1197, 1988 WL 1588755 (IELRB 1988).

Herein, the University contends the snack bar supervisors devote the vast majority of their shifts to monitoring, observing, checking and correcting the performance of their subordinates, the snack bar attendants and student workers, and exercise that authority using independent judgment. Moreover, the University further contends combining such constant direction paired with the snack bar supervisors' authority to unilaterally issue student infraction forms and recommend more serious discipline, makes them supervisory within the meaning of the Act, relying on the Board's decisions in the following two cases: American Federation of State, County and Municipal Employees, Council 31/University of Illinois, Urbana-Champaign, 31 PERI ¶115, 2012 WL 12034291 (IELRB 2012), aff'd, 2013 IL App (1st) 120487-U (U of I); American Federation of State, County, and Municipal Employees, Council 31/Illinois State University, 31 PERI ¶117, 2012 WL 12034292 (IELRB 2012), aff'd, 2013 IL App (1st) 120487-U (ISU).

In the U of I case, the evidence indicated the employees at issue, the building service foremen, had authority in the interest of the employer to hire, discipline, and evaluate, or to effectively recommend such actions, with regard to the building service workers, and did so using independent judgment in the interest of the employer, for the preponderance of their employment time. Likewise, in the ISU case, the evidence indicated the employees at issue, again, building service foremen, had authority in the interest of

the employer to discipline and evaluate, or to effectively recommend such actions, with regard to, again, building service workers, and did so using independent judgment in the interest of the employer, for the preponderance of their employment time.

In the instant case, however, the evidence establishes the snack bar supervisors lack authority to perform any one or more of the enumerated supervisory functions, or to effectively recommend such performance, with regard to snack bar attendants. There is no evidence snack bar supervisors are able to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline snack bar attendants, or effectively recommend such action. Nor do snack bar supervisors have any role in adjusting the grievances of the snack bar attendants. In fact, the record indicates snack bar attendants are supervised by the administrator or administrators overseeing the venues at which they work, and those same administrators prepare their performance evaluations. Correspondingly, snack bar supervisors have no input or role in the snack bar attendants' performance evaluations. Snack bar supervisors have no authority to layoff or recall snack bar attendants.

Likewise, snack bar supervisors have no authority to recommend or issue discipline to snack bar attendants. However, like any administrator, snack bar attendant, student manager, or a student worker, snack bar supervisors may make an initial report of facts or conduct they have observed to an administrator, who then completes a form, including the reported facts or conduct, and submits it up the chain of command for an EMDH human resources employee to determine whether a pre-disciplinary meeting should be held, in which case there is an investigation of the facts or conduct and a determination as to whether they warrant discipline. Such initial reports of facts or conduct may also be made by any administrator, snack bar attendant, student manager, or student worker. In short, the record is devoid of evidence indicating snack bar supervisors have authority to perform any one or more of the enumerated supervisory functions, or to effectively recommend such performance, with regard to snack bar attendants.

Moreover, the evidence demonstrated snack bar supervisors devote a negligible amount of their employment time to overseeing snack bar attendants, assigning responsibilities to snack bar attendants, or directing them to perform tasks. Stevenson spends five percent of his worktime monitoring, overseeing, and correcting the work of snack bar attendants. Cisco does not currently work with any snack bar attendants, but when he did, during the 2022-2023 academic year, he devoted less than five percent of his worktime to monitoring, overseeing, and correcting the work of the snack bar attendant. Osborne spends approximately five percent of her worktime on monitoring and observing the work of the snack bar attendant and only occasionally directed her to help at a station which was particularly busy and needed

assistance. Similarly, Osborne spends approximately ten percent of her worktime on monitoring and observing the work of the snack bar attendants and again, only occasionally directed them to help at a station which was particularly busy and needed assistance.

As there is no evidence snack bar supervisors engage in supervisory activity with regard to snack bar attendants, there is correspondingly no evidence they exercise independent judgment in the interest of the employer in conjunction therewith, nor evidence a preponderance of their employment time is spent in such activity. Accordingly, snack bar supervisors are not supervisors within the meaning of Section 2(g) of the Act, with regard to snack bar attendants.

However, in this matter, the University argued the snack bar supervisors devote the vast majority of their shifts to monitoring, observing, checking and correcting the performance of the snack bar attendants and student workers, and exercise that authority using independent judgment, and further argued combining such constant direction with the snack bar supervisors' authority to unilaterally issue student infraction forms and recommend more serious discipline, makes them supervisory within the meaning of the Act, citing to the U of I and ISU cases above. Indeed, the University's argument requires determining whether snack bar supervisors qualify as supervisors within the meaning of Section 2(g) of the Act, with regard to the combined group of snack bar attendants and student workers. This exercise is unnecessary, as the relevant inquiry is limited to whether the snack bar supervisors have authority to perform one or more of the enumerated supervisory functions, or to effectively recommend such performance, with regard to other employees within the appropriate bargaining unit. There is no dispute the appropriate unit for the placement of the snack bar supervisors is that proposed by the Union, which includes the snack bar attendants, and there is no assertion or anticipation student workers will or could be added to the proposed unit. Therefore, examining whether snack bar supervisors are supervisors within the meaning of Section 2(g) of the Act, with regard to student workers, is immaterial.

V. CONCLUSIONS OF LAW

The persons employed by the University in the job title or classification of Food Court/Snack Bar Supervisor, are not supervisors within the meaning of Section 2(g) of the Act, and thus, not excluded from collective bargaining.

VI. ORDER

Unless this order is rejected or modified by the Board, the instant petition shall be remanded to the executive director for processing in accordance with Section 1110.105 of the Board's Rules.

VII. EXCEPTIONS

In accordance with Section 1110.105(k)(2) of the Board's Rules, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than seven (7) days after receipt hereof. Parties may file responses to exceptions and briefs in support of the responses not later than seven (7) days after receipt of the exceptions and briefs in support thereof. Exceptions and responses must be filed, if at all, at ELRB.mail@illinois.gov and with the Board's general counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, exceptions and responses sent to the Board must contain a certificate of service, that is, "**a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service.**" If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Section 1100.20 of the Rules, concerning service of exceptions. If no exceptions have been filed within the seven (7) day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois, this 25th day of March, 2024.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

/s/

**John F. Brosnan
Administrative Law Judge**