

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

This case is before us on remand from the Illinois Appellate Court for the Fourth District to consider whether the petitioned-for Snack Bar Supervisors are supervisors within the meaning of Section 2(g) of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.*, with respect to Snack Bar Attendants and Student Workers, and to clarify the preponderance of time element of the supervisory test.

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 Act seeking to add employees of Illinois State University (University or Employer) in the title or classification of Food Court/Snack Bar Supervisor (Snack Bar Supervisor) to its existing bargaining unit of employees. The University objected to the petition, asserting that the Snack Bar Supervisors exercised supervisory authority over the Snack Bar Attendants and Student Workers, which should render them excluded from the bargaining unit as supervisors within the meaning of Section 2(g) of the Act. The Snack Bar Attendants are already part of the existing bargaining unit at issue in this matter. The Student Workers are not part of any bargaining unit, and the petition does not seek to include them. In June 2024, we issued an Opinion and Order (2024 Opinion and Order) affirming an Administrative Law Judge's Recommended Decision and Order (ALJRDO) finding that the Snack Bar Supervisors are not supervisors within the meaning of the Act, and accordingly, are not excluded from collective bargaining. Both the Board and the Administrative Law Judge (ALJ) viewed the inquiry of supervisory status as limited to whether the petitioned-for employees had

supervisory authority over other employees *within* the bargaining unit. That is, the question was limited to whether the Snack Bar Supervisors exercised supervisory authority over the Snack Bar Attendants, not the Student Workers. The Court disagreed, holding that supervisory authority over non-bargaining unit personnel is relevant to determining supervisory status. It reversed our decision and remanded it back for further consideration.

II. Supplemental Facts

In our 2024 Opinion and Order, we adopted the facts as set forth in the underlying ALJRDO. The Court urged us to clarify our reasoning with respect to the preponderance of time element of the supervisor definition and explain why, if we accepted the ALJ's findings that Snack Bar Supervisors Jessica Schoenbrun (Schoenbrun) and Breana Osborne (Osborne) spent over 50 percent of their time overseeing their subordinates, we did not consider that in concluding that the record did not establish that, even including the Student Workers, the Snack Bar Supervisors were supervisors within the meaning of the Act. The Court was troubled that we decided that the University did not satisfy the preponderance of time requirement without discounting the testimony of Osborne and Schoenbrun and giving more weight to Snack Bar Supervisor Michael Stevenson's (Stevenson) testimony that he spent less than 50 percent of his time overseeing subordinates. To comply with the Court's Order, we supplement the ALJ's factual findings with the following additional facts found in the record:

A. Osborne

Snack Bar Supervisor Osborne works with one Snack Bar Attendant and many Student Workers. Tr. 439-440, 446. She does not assign work to the Snack Bar Attendant. Tr. 440, 479. Osborne has never disciplined a Snack Bar Attendant. Nor has she been told by an Administrator that she has authority to discipline or recommend discipline to Snack Bar Attendants. Tr. 440. She has no role in scheduling Snack Bar Attendants or calling them back if they are not scheduled. Tr. 444. Osborne plays no part in Snack Bar Attendant evaluations. Tr. 445. Her ability to call a Snack Bar Attendant from the back of the facility to work in front is mainly based on the need for more bodies. Tr. 479. A Snack Bar Attendant has to stay with Osborne until 11:00 p.m. when she closes, she is not allowed to let them leave earlier. Tr. 472, 481. Osborne spends about 5 percent of her work time giving direction to, assigning, monitoring,

or overseeing Snack Bar Attendants. Tr. 456. In her mind, the 5 percent is the literal 'hey, do this, hey do that'. Tr. 479.

Osborne assigns or reassigns Student Workers' stations based on their strengths or if she wants them to be trained on something new. Tr. 446, 459, 463. Strengths means who is faster at each station. Tr. 483. Osborne has no role in scheduling Student Workers. Tr. 447. If there are not enough Student Workers on a shift, Osborne will let Administrator Weller know and request that Weller ask students if they want to come in. Tr. 465. At closing, Osborne can decide to keep students with her until 11:00 p.m. or let them go early. Tr. 472. Each Student Worker counts their own register. Tr. 452. If they have a cash deposit, Osborne verifies it and initials their envelope. Tr. 452. If the amount differs from the receipts by \$5 or more, Osborne has to give the student an infraction. Tr. 452. Osborne writes on a slip that the cash deposit was off by \$5, the student signs it, and Osborne places it in a folder. Tr. 453. Snack Bar Supervisors can issue Student Workers infractions. Tr. 474. Infractions are step one of the University's three-step disciplinary procedure for Student Workers. Univ. Ex. C. Students incur points with each infraction incurred. Univ. Ex. C. An infraction itself may not lead to formal discipline, but formal discipline will issue if infraction points reach a certain level. Univ. Ex. C. The third step of the disciplinary procedure could result in dismissal. Univ. Ex. C. Osborne has also given a Student Worker an infraction for not being dressed in their uniform correctly. Tr. 453. She can issue Student Workers infractions for attendance, register mistakes and uniform. Tr. 473-474. Osborne does not participate in performance evaluations for Student Workers. Tr. 456.

For most of her shift, Osborne is expected to monitor, observe, and make sure that Student Workers and Snack Bar Attendants are doing what they are supposed to. Tr. 477-478. Monitoring focuses on the Student Workers. Tr. 482. Osborne checks to make sure subordinates are doing what they are supposed to. Tr. 458. As she does all this, she helps on every task and performs the same work as the others. Tr. 481. Most of Osborne's time is spent performing tasks similar to those performed by Student Workers, including dealing with customers' issues, operating the cash register, making drinks, cleaning counters, pulling pastries, and washing dishes. Tr. 451, 481.

B. Schoenbrun

Either Snack Bar Supervisor Schoenbrun or the Snack Bar Attendants themselves decide where the Snack Bar Attendant should work during a shift. Tr. 494. That is because it is just a matter of filling in where a body is needed. Tr. 494. Schoenbrun has no authority to discipline or recommend discipline of a Snack Bar Attendant, all she does is relay what she sees to Weller. Tr. 494-495. Schoenbrun does not evaluate or give input into evaluations for Snack Bar Attendants. Tr. 496. Nor can she ask a Snack Bar Attendant to work overtime or call a Snack Bar Attendant into work when they are not scheduled. Tr. 496. Schoenbrun moves Snack Bar Attendants around to different positions. Tr. 507. Ten percent of her day is spent assigning, directing, and monitoring Snack Bar Attendants' work. Tr. 503.

Schoenbrun assigns and moves Student Workers to stations based on venue business, their skill level, and their schedule. Tr. 496-497, 507. Schoenbrun, along with more experienced Student Workers, Snack Bar Attendants, Administrators, and Student Managers train new Student Workers. Tr. 497. If Schoenbrun needs more students to work a shift, she contacts an Administrator to reach out to the Student Workers. Tr. 500. If a Student Worker is not following Starbucks policy, the attendance policy, or the cash handling policy, she is required to give them an infraction. Tr. 510-511. She has given infractions to Student Workers for attendance, if their money deposit was off, or if they did not reconcile a credit card transaction correctly. Tr. 498. Schoenbrun fills out the infraction form, notifies the student of reason, has the student sign and date it, and she places it in a folder for the Administrators. Tr. 498. For something that is as cut and dry as being late or calling in, Schoenbrun believed she was required to issue an infraction. Tr. 511. For a behavioral issue, Schoenbrun would typically address it with the student before writing them up, depending on the level of behavioral issue. Tr. 511. As part of Starbucks policy, she is allowed to just counsel someone before writing them up, it is called coaching. Tr. 511. Schoenbrun has sent Student Workers home when a shift is overstaffed, but if an Administrator is on duty they can override her decision. Tr. 512-513. Part of monitoring and inspecting is to make sure subordinates are not doing anything wrong. Tr. 515-516. On cross-examination, Schoenbrun agreed with counsel for the University that the majority of her time is spent "sort of watching, observing, inspecting everybody. Not just the [snack bar] attendants, but watching and observing and inspecting everybody" Tr. 516. Everybody refers to the Snack Bar

Attendants and Student Workers, as the ALJ cites that page of the transcript for his finding that Schoenbrun spends 10 percent of her time monitoring and observing Snack Bar Attendants and slightly more than 50 percent of her time monitoring and overseeing Student Workers.

C. Cisco

Snack Bar Supervisor Jacob Cisco (Cisco) has no role in scheduling Student Workers. Tr. 358. He performs work that is similar to the Student Workers'. Tr. 362. Cisco has no part in performance evaluations for Student Workers or Snack Bar Attendants. Tr. 363. He has given infractions to Student Workers, primarily for attendance. Tr. 367, 395.

D. Berrocales

University Senior Assistant Director of Retail Operations Heather Berrocales reported that Snack Bar Supervisors are expected to oversee, monitor, observe, and correct anything that would be against University standards and the standards set by the retail dining franchises. Tr. 45-46. For example, whether the sanitation buckets are out or whether the food is being prepared correctly. Tr. 45-46. Snack Bar Supervisors are responsible for making sure everyone, including themselves, are following pre-determined food preparation and sanitary standards. Tr. 47.

III. Discussion

Section 3 of the Act gives educational employees the right to organize for purposes of collective bargaining with educational employers. Statutory exclusions are narrowly interpreted because the result of a finding of managerial or supervisory status is to prevent employees from "exercising the full panoply of rights otherwise guaranteed to them by the Act." *Board of Education of Community Consolidated High School Dist. No. 230 v. IELRB*, 165 Ill. App. 3d 41, 518 N.E.2d 713 (4th Dist. 1987). The party asserting that a position falls within a statutory exclusion has the burden of establishing such status. *Southern Illinois University Board of Trustees*, 5 PERI 1197, Case Nos. 85-RC-0022-S et. al. (IELRB Opinion and Order, September 30, 1988). Section 2(b) of the Act excludes supervisory employees from the definition of educational employee.

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.

There are three components to this definition: (1) the employee must have the authority to perform some of the functions of supervisors or to effectively recommend such action; (2) those functions must require the use of independent judgment and not be merely clerical or routine in nature; and (3) the employee must spend a preponderance of their time exercising these functions. *Board of Trustees of University of Illinois v. IELRB*, 235 Ill. App. 3d 709, 600 N.E.2d 1292 (4th Dist. 1992).

A. Indicia of Supervisory Authority/Independent Judgment

Supervisory status under the Act demands that the alleged supervisor exercise authority, in the interest of the employer, to 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. 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) (although Section 2(g) does not include the functions of assigning and directing, the Board must consider those functions in its analysis of supervisory authority).

A finding of supervisory status requires the use of independent judgment on the part of the asserted supervisor. The ALJ found that Schoenbrun spent 10 percent of her time monitoring and observing Snack Bar Attendants and slightly more than 50 percent of her time monitoring and overseeing Student Workers. He found that Osborne spent 5 percent of her time monitoring and observing Snack Bar Attendants and more than 50 percent of her time monitoring and overseeing Student Workers. However, the ALJ did not specify that any of this amounted to supervisory authority within the meaning of the Act. Simply because we adopt the ALJ's factual findings that Schoenbrun and Osborne spend a preponderance of their time monitoring, overseeing, and observing their subordinates, does not mean that we should have found them supervisors under *Chicago Principals Association v. IELRB*, 187 Ill. App. 3d 64, 543 N.E.2d 166 (1st Dist. 1989). Nor does our conclusion that the University did not meet its burden of proving supervisory status with respect to Student Workers require us to credit Stevenson's testimony over that of Schoenbrun and Osborne. That is because, despite the amount of time Schoenbrun

and Osborne spent performing these activities, the record does not indicate that they did so using the independent judgment required to exclude them from the Act's protection as supervisors.

The University's argument throughout this matter is that the Snack Bar Supervisors engaged in activity typically analyzed under the supervisory functions of direct and discipline. For that reason, we analyze whether the University has met its burden to establish that the Snack Bar Supervisors engage in supervisory authority to direct and discipline Snack Bar Attendants and Student Workers using independent judgment for a preponderance of their employment time.

1. Direct

The term "direct" encompasses several distinct but related functions, including reviewing and monitoring work activities, scheduling work hours, approving time off and overtime, assigning duties and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. *Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. & Mun. Employees, Council 31, AFL-CIO*, 153 Ill. 2d 508, 607 N.E.2d 182 (1992); *City of Freeport v. Illinois State Labor Relations Bd.*, 135 Ill. 2d 499, 554 N.E.2d 155 (1990). Thus, the Snack Bar Supervisors' authority to correct, monitor, oversee, observe, and train subordinates is analyzed under the indicia of direct. To constitute supervisory authority to direct within the meaning of the Act, the Snack Bar Supervisors' responsibility for their subordinates' proper work performance must also involve significant discretionary authority to affect the subordinates' terms and conditions of employment. *Prairie State College*, 31 PERI 35, Case No. 2011-RC-0008-C (IELRB Opinion and Order, October 20, 2011), citing *Illinois Department of Central Management Services (State Police) v. Illinois Labor Relations Board, State Panel*, 382 Ill. App. 3d 208, 229, 888 N.E.2d 562, 582 (4th Dist. 2008). In order for the Snack Bar Supervisors' daily authority for running a shift to constitute supervisory authority to direct within the meaning of the Act, the record must show something more than simply that they observe and monitor subordinates or that they are responsible for the operation of their shifts. *Ill. Sec. of State*, 20 PERI ¶11 (IL SLRB 2003), *aff'd by unpub. order*, 16 PERI ¶ 4004, 1999 WL 35113648; *County of Cook & Sheriff of Cook County (Dept. of Corrections)*, 15 PERI ¶3022 (IL LLRB 1999); *Peoria Housing Authority*, 10 PERI ¶2020 (IL SLRB 1994), *aff'd by unpub. order*, docket No. 3-94-0317 (3rd Dist. 1995); *City of Naperville*, 8 PERI ¶2016 (IL SLRB 1992). Instead, the evidence must demonstrate that the Snack

Bar Supervisors are responsible for their subordinates' work such that they are actively involved in checking, correcting, and giving instructions to subordinates, without guidelines or review by others. *City of Chicago*, 10 PERI ¶3017 (IL LLRB 1994); *City of Lincoln*, 4 PERI ¶2041 (IL SLRB 1988).

Snack Bar Supervisors oversee, monitor, observe and correct anything that does not meet University or franchise standards. Making sure subordinates comply with pre-determined guidelines not set by the Snack Bar Supervisors is not sufficient evidence that they direct subordinates using independent judgment. The Snack Bar Supervisors monitor their venues to determine when to bring more supplies to a workstation, make drinks or sandwiches, and when to ask another worker to shift from a quieter station to a busier one. At best, these things show that they are responsible for the operation of their shifts and are routine and clerical in nature.

Snack Bar Supervisors assign subordinates to workstations based, in part, on their knowledge of subordinates' strengths and skill levels. In order to rise to the level of supervisory authority, an alleged supervisor must exercise significant discretionary authority which affects the terms and conditions of their subordinates' employment. *Village of Broadview v. Illinois Labor Relations Board*, 402 Ill. App. 3d 503, 510 (1st Dist. 2010) (citing *Illinois Fraternal Order of Police Labor Council v. McHenry*, 15 PERI ¶2014 (IL SLRB 1999) and *Chief Judge of the Circuit Court of Cook County*, 9 PERI ¶2033 (IL SLRB 1993)). Working at a station making drinks rather than making sandwiches does not affect an employees' terms and conditions of employment. It is not comparable to a shift or worksite assignment. At other times, Snack Bar Supervisors base assignment on subordinates' schedules and business in the establishment, neither of which employ the use of Snack Bar Supervisors' independent judgment. The decision to move employees to provide coverage at busier stations is a routine decision that does not involve the consistent choice between two or more significant courses of action and therefore does not involve use of independent judgment.

When Osborne closes, she has discretion when to let a Student Worker leave. However, the record does not indicate what she bases that discretion upon. So, it cannot be used as evidence of supervisory authority.

Snack Bar Supervisors have no role in scheduling Student Workers or Snack Bar Attendants or in their performance evaluations.

Snack Bar Supervisors train Student Workers. However, the requisite independent judgment is lacking because the training is done in conjunction with Snack Bar Attendants, Administrators, Student Managers, and more experienced Student Workers.

Any authority the Snack Bar Supervisors have to assign work, correct, monitor, oversee and train Student Workers and Snack Bar Attendants is insufficient to establish supervisory authority to direct because they do not enjoy discretion to affect the terms and conditions of employment of either Student Workers or Snack Bar Attendants nor do they use the requisite independent judgment. The record does not indicate that the Snack Bar Supervisors exercise authority that would align their interest with that of the University. At most, the authority to direct the work force, as described, is akin to that exercised by lead workers who may instruct and advise their fellow bargaining unit members on the work to be performed. *Stephenson County Circuit Court*, 25 PERI ¶92 (IL SLRB 2009), citing *NLRB v. Security Guard Service, Inc.*, 384 F.2d 143 (5th Cir. 1967).

2. Discipline

Snack Bar Supervisors can issue infractions to Student Workers. Even though an infraction itself may not lead to discipline, it can form the basis for future discipline. Thus, infractions are discipline that affect the terms and conditions of a Student Worker's employment. *University of Illinois, Urbana-Champaign*, 31 PERI 115, Case No. 2011-RS-0006-S (IELRB Opinion and Order, January 19, 2012), *aff'd*, 2013 IL App (1st) 120487-U. However, most of Snack Bar Supervisors' authority to discipline Student Workers is not discretionary. If a Student Worker is not following a policy, Snack Bar Supervisors are required to give them an infraction. Snack Bar Supervisors have to give a student an infraction if their cash register is off by \$5 or more. Snack Bar Supervisors have some discretion as to whether to issue a Student Worker an infraction for some offenses, such as behavioral issues.

Consequently, the Snack Bar Supervisors' limited ability to administer such discipline without approval demonstrates independent judgment. For these reasons, we find that the Snack Bar Supervisors have supervisory authority to discipline using independent judgment.

B. The Preponderance Requirement

Supervisory status requires that the employee devote a preponderance of their employment time to exercising whatever supervisory authority they possess. The term “preponderance” has been construed to mean the majority or more than 50 percent. *Department of Central Management Services v. Illinois State Labor Relations Board*, 249 Ill. App. 3d 740, 749, 619 N.E.2d 239, 245 (4th Dist. 1993).

As discussed above, the Snack Bar Supervisors engage in the lone supervisory function of disciplining subordinates when they issue infractions to Student Workers that require they use independent judgment. But the record does not indicate that Snack Bar Supervisors spend a preponderance of their employment time exercising their limited authority to discipline subordinates. The ALJ found that Snack Bar Supervisors Schoenbrun, Osborne, and Stevenson spend the majority of their workdays performing tasks similar to those performed by Student Workers. (ALJRDO p. 6, 8). Likewise, the supplementary facts indicate that Cisco performs work similar to that of the Student Workers. Under these circumstances, the preponderance requirement has not been satisfied.

IV. Order

We find that the University has not met its burden to establish that the Snack Bar Supervisors are supervisors within the meaning of Section 2(g) of the Act with respect to Student Workers and Snack Bar Attendants. As a result, the Snack Bar Supervisors are not excluded from collective bargaining, the petitioned-for unit is appropriate under Section 7 of the Act, 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: **January 7, 2026**

/s/ Lara D. Shayne

Issued: **January 7, 2026**

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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