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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO JOINT BOARD, LOCAL 200,)	On Petition for Review
RWDSU, UNITED FOOD AND COMMERCIAL)	of the Decision and Order
WORKERS INTERNATIONAL UNION,)	of the Illinois Labor
)	Relations Board, Local Panel
Petitioner-Appellant,)	
v.)	
)	
ILLINOIS LABOR RELATIONS BOARD,)	
LOCAL PANEL, and COUNTY OF COOK)	No. L-RC-14-018
(HEALTH AND HOSPITALS SYSTEM),)	
)	
Respondents-Appellees.)	

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Illinois Labor Relations Board, Local Panel, finding that pharmacy supervisors were supervisors within the meaning of the Labor Relations Act was not clearly erroneous where the evidence supported the conclusion that pharmacy supervisors effectively recommend discipline and direct their subordinates.

¶ 2 This case is before us on direct review of an administrative order entered by respondent Illinois Labor Relations Board, Local Panel (ILRB), dismissing a petition seeking union representation. Petitioner Chicago Joint Board, Local 200, RWDSU, United Food and

Commerical Workers International Union (the Union) appeals from the administrative decision of respondent ILRB finding that pharmacy supervisors are "supervisors" within the meaning of section 3(r) of the Labor Relations Act (the Act) (5 ILCS 315/3(r) (West 2012)). On appeal, the Union argues that the ILRB erred in adopting the findings of the administrative law judge (ALJ) that respondent employer, County of Cook (Health and Hospitals System) (CCHHS), met its burden of proof to show that pharmacy supervisors are "supervisors" under section 3(r) of the Act because CCHHS did not establish that (1) pharmacy supervisors have the authority to effectively recommend discipline of their subordinates, (2) pharmacy supervisors direct their subordinates with independent judgment in the interest of the employer, and (3) pharmacy supervisors spend a preponderance of their working time engaged in supervisory functions.

¶ 3 CCHHS is comprised of several hospitals and health services, including Stroger Hospital (Stroger), Cermak Health Services (Cermak), Oak Forest Hospital (Oak Forest), and Provident Hospital (Provident). Each location has at least one pharmacy. A director of pharmacy (director) oversees the pharmacies at his/her assigned hospital. The pharmacy manager (manager) oversees the pharmacy supervisors and reports to the director. Pharmacy supervisors oversee the pharmacists and technicians who dispense medication, perform prescription verification, and conduct patient counseling. Each pharmacy supervisor oversees approximately 20 to 30 subordinates.

¶ 4 In June 2014, The Union filed a petition with the ILRB seeking to represent the position titled Pharmacy Supervisor IV employed by CCHHS. CCHHS opposed the petition, asserting that the position was excluded from coverage under the Act, pursuant to an exemption of supervisory employees under section 3(r) of the Act.

¶ 5 Section 3(r)(1) provides, in relevant 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 time to exercising that authority, State supervisors notwithstanding." 5 ILCS 315/3(r)(1) (West 2012).

¶ 6 A hearing was conducted on the petition before the ALJ in December 2014. The parties' positions at the hearing were as follows. CCHHS contended that the pharmacy supervisors "hire, direct, discipline, and discharge their subordinates using independent judgment," and they spend a preponderance of their work exercising this supervisory authority. The Union asserted that the pharmacy supervisors do not "hire, direct, discipline, or discharge their subordinates" using independent judgment, and that the supervisors spend a preponderance of their work compiling reports on pharmacy production and monitoring the pharmacy customer lines, rather than in exercising any supervisory authority.

¶ 7 Because the ALJ determined that CCHHS did not prove its burden that pharmacy supervisors used independent judgment related to hiring, the parties do not contest that conclusion on appeal. Therefore, we tailor our discussion of the evidence presented at the hearing to the issues raised on appeal, specifically, whether the pharmacy supervisors utilize

independent judgment related to discipline and direction of their subordinates, and whether they spend a preponderance of their work engaged in their supervisory authority.

¶ 8 Four pharmacy supervisors testified at the hearing: Gervaise Hunter-Morris, Dawn Purnell, Charnell Hall, and Denise Davis. Several directors and managers testified as well. Catanya Norwood testified that she was the interim system director of pharmacy services at CCHHS. She also acts as director at Stroger where she oversees pharmacy supervisor Davis and two other supervisors. Davis oversees approximately 12 pharmacists and over 20 technicians. Jay Silver testified that he is the pharmacy director at Oak Forest and he oversees supervisors Hall and Hunter-Morris. Hall is a pharmacy supervisor at Oak Forest Health Central Fill Pharmacy and she oversees 9 pharmacists and 12 technicians. Hunter-Morris is a pharmacy supervisor at the Oak Forest Health Center Outpatient Pharmacy and oversees 8 pharmacists and approximately 10 technicians. Hunter-Morris previously worked at Cermak, where she reported to Mary Ann Wrobel as her director. Charlia Arbo testified that she was the pharmacy director at Provident and she oversees pharmacy supervisor Purnell. Purnell is pharmacy supervisor at Provident Outpatient Pharmacy and oversees 8 pharmacists and 9 technicians.

¶ 9 The parties stipulated that the principal work of the pharmacy supervisors was substantially different from the work performed by the pharmacists and technicians. The pharmacists and technicians dispense medication to patients while the supervisors are responsible for quality control. The supervisors' duties included data processing, inventory, drug distribution, scheduling, and manufacturing services of the area.

¶ 10 The pharmacy supervisors testified at the hearing they spent most of their work hours compiling reports on pharmacy production and monitoring the pharmacy lines. The reports include spreadsheets that track prescriptions as well as work of individual pharmacists and

technicians, which are compared to set metrics established by CCHHS. A reporting system alerts the pharmacy supervisor of medication errors or deviations from the established standards. The pharmacy supervisor is tasked with investigating the alleged misconduct and reporting it to the manager or director.

¶ 11 The job description for pharmacy supervisor includes "[r]eview and evaluate employee performance, administer corrective and disciplinary action when required." Additionally, the CCHHS personnel rule 8.05(a) provides that "[e]xcept as otherwise directed by the Department Head, the Employee's direct Supervisor may impose discipline if the maximum disciplinary action to be taken is a verbal or written reprimand." The pharmacy supervisors are tasked with investigating instances of employee misconduct. Norwood testified at the hearing that counseling forms and employee conference forms are completed by the pharmacy supervisors and are placed in the employee's personnel file and are considered in progressive discipline. The CCHHS personnel rules do not include counseling as progressive discipline. Under the collective bargaining agreement, oral and written warning in an employee's personnel file are considered for progressive discipline.

¶ 12 CCHHS submitted several disciplinary forms completed by pharmacy supervisors as exhibits at the hearing. These forms included employee conferences, counseling, verbal reprimand, and a suspension notice. The disciplinary forms were signed by the respective pharmacy supervisor for the subordinate, but do not require signatures for a manager or director. The pharmacy supervisors testified that they draft the disciplinary forms with instructions from the directors or a labor relations employee at CCHHS. Pharmacy supervisors issue the discipline to their subordinates with a member of management present as a witness. At a disciplinary hearing, the pharmacy supervisor is tasked with presenting CCHHS's version of events. The

hearing officer makes a recommendation and if discipline is warranted, then the pharmacy supervisor presents that determination to their subordinate.

¶ 13 Norwood testified that pharmacy supervisors are the frontline management with direct contact with pharmacists and technicians. At the hearing, the pharmacy supervisors testified that they do not have the authority to determine discipline on their own. They stated that they report the behavior to their manager or director, who in turn recommended the appropriate disciplinary response, if any. In contrast, the directors testified that the decision to discipline a subordinate lies with a pharmacy supervisor and they generally approve the disciplinary forms when they are submitted.

¶ 14 Hunter-Morris testified regarding a specific disciplinary memorandum submitted as an exhibit. The memorandum indicated that it was from Hunter-Morris to a specific technician and carbon copied to Wrobel as pharmacy director and the assistant pharmacy director. The memo stated that the technician had not refilled a medication as directed, but signed off on the sheets as though the employee had refilled it. The memo "serve[d] as written documentation of 'counseling' regarding your failure to complete your assignment." At the hearing, Hunter-Morris stated that her role was to report what happened and discuss it with Wrobel, and then she was "instructed to counsel the employee." Similarly, Hall testified that Norwood instructed her to write up a technician for packing errors of medication with counseling as the discipline. Purnell testified that she was instructed to inform her director of misconduct. Davis stated that her manager told her not to be involved in disciplinary matters, but to only report misconduct.

¶ 15 Eureva Walker testified at the hearing that she was currently a pharmacy director, but her testimony related to her time as a pharmacy supervisor from 2009 to 2012. She did not have a manager supervising her for the first six months as a supervisor. She stated that she made the

decision to discipline employees, and reported to her director or manager before issuing the discipline. She estimated that she spent approximately 60% of her time on discipline when she was a pharmacy supervisor. Hunter-Morris estimated that she spends 5 to 7% of her time on discipline. Hall stated that she spent 5% or less of her time counseling subordinates and 5% or less of her time involved in discipline. Purnell said she spent 5 to 10% of her time counseling subordinates. Davis estimated she spent 5% of her time counseling subordinates. Norwood testified that she estimated that pharmacy supervisors spent "upwards of 60 percent of the time because it's a part of evaluation and monitoring their productivity."

¶ 16 Silver denied that directors initiated discipline, and testified the pharmacy supervisors would bring instances of discipline to his attention, and he "support[ed]" them. He stated that Hunter-Morris or Hall would let him know if they had a disciplinary hearing and either himself or the manager would sit in with the supervisor. Wrobel testified that when she supervised Hunter-Morris, Hunter-Morris would investigate employee behavior and then bring the information to Wrobel. Wrobel stated that she would review Hunter-Morris's completed form and sometimes suggest changes in verbiage. She estimated that pharmacy supervisors spent 30% of their time on discipline. Arbo testified that she worked with Purnell to investigate the misconduct, draft the disciplinary document, and present the discipline to the employee. She stated that Purnell did not issue reprimands without her knowledge and consent. Arbo does not initiate discipline, Purnell notifies her. Arbo estimated that pharmacy supervisors spend approximately 20 to 30% of their time on discipline.

¶ 17 Evidence at the hearing was also presented related to the pharmacy supervisors' role in direction of their subordinates. Pharmacy supervisors are required to formally evaluate the pharmacists and technicians. These evaluations are reviewed by a manager or director. The

evaluations contain sections on job skills and techniques, work habits, quality of work, quantity of work, and ability to work with others. Each sections is broken down into specific tasks and the pharmacy supervisor rates the employee between one and five on each task for each section, totaling overall job factor rating. On the final page, the pharmacy supervisor has space to write a summary of the overall performance of the employee, detailing the positive traits of the employee as well as areas to focus on improvement. The evaluations are placed in the employee's personnel file and are considered in decisions for promotion or transfers and also can lead to additional training. The collective bargaining agreement provides that "ability and fitness to perform the required work" is considered in determining promotion and lay-off preferences. The pharmacy supervisors testified at the hearing that their managers or directors make changes to the evaluations. Several employee evaluations were submitted as part of the exhibits at the hearing. Of those, only one evaluation contained changes. In that evaluation, changes were marked for two of the individual tasks.

¶ 18 Witnesses at the hearing also testified about the pharmacy supervisors' role in reviewing productivity and monitoring work flow. The pharmacy supervisors are tasked with using a computer program that records data on prescriptions issued and medication dispensed. Specifically, the program monitors preverification and verification of prescriptions by pharmacists, and monitors the patients seen by a technician as well as the prescriptions processed. The pharmacy supervisor uses the program to gauge their subordinates work. The pharmacy supervisors are required to compile the data for all employees and compare it to the metrics set by CCHHS. This information is submitted to managers. Arbo testified that a pharmacy supervisor may not submit a discrepancy to the manager first, but might speak with the employee first to understand the reason for the discrepancy. Silver testified that monitoring the

metrics is a preliminary step to determine if disciplinary action is needed. However, Arbo testified that an employee's failure to meet the metrics is not a basis for discipline because the metrics are an ongoing process that is modified by CCHHS.

¶ 19 In April 2015, the ALJ issued her recommended decision and order, finding that the pharmacy supervisors were supervisors within the meaning of section 3(r) of the Act. Specifically, the ALJ found that (1) pharmacy supervisors have "the authority to effectively recommend the discipline of their subordinates, though they do not have the authority to unilaterally impose discipline," and (2) pharmacy supervisors "direct their subordinates with independent judgment when they review their subordinates' day to day activities and evaluate their work." The ALJ also concluded that the pharmacy supervisors spend a preponderance of their work time engaged in supervisory functions. The ALJ held that pharmacy supervisors do not have the supervisory authority to hire or to make effective recommendations on hiring.

¶ 20 In May 2015, The Union filed an exception to the ALJ's decision with the ILRB. CCHHS filed responses to the objection. In September 2015, the ILRB issued a written decision, holding that after reviewing the record, exceptions, and responses, the ILRB upheld the ALJ's decision and order.

¶ 21 This appeal followed.

¶ 22 On appeal, The Union argues that the ILRB erred in upholding the ALJ's finding that CCHHS met its burden to show that pharmacy supervisors are supervisors within the meaning of section 3(r) of the Act.

¶ 23 The Administrative Review Law provides that judicial review of an administrative agency decision shall extend to all questions of law and fact presented by the entire record before the court. 735 ILCS 5/3-110 (West 2012). Further, "[t]he findings and conclusions of the

administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2012). "The standard of review, 'which determines the degree of deference given to the agency's decision,' turns on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact." *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 471 (2005) (quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001)). "In examining an administrative agency's factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of an administrative agency." *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). "[A] reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence." *Id.* "An administrative agency's factual determinations are contrary to the manifest weight of evidence where the opposite conclusion is clearly evident." *Id.*

¶ 24 "A mixed question of law and fact asks the legal effect of a given set of facts." *Comprehensive Community*, 216 Ill. 2d at 472. Stated another way, a mixed question is one in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or whether the rule of law as applied to the established facts is or is not violated. *AFM Messenger*, 198 Ill. 2d at 391. A mixed question of law and fact is reviewed under the clearly erroneous standard. *Comprehensive Community*, 216 Ill. 2d at 472.

¶ 25 Section 2 of the Act grants "public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection." 5 ILCS 315/2 (West 2012). However, the Act bars a bargaining unit from including both

employees and supervisors. 5 ILCS 315/3(s)(1) (West 2012). "This prohibition 'ensures employers that pro-union bias will not impair the supervisor's ability to apply the employer's policies to subordinates according to the employer's best interests.' " *Secretary of State v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4th) 111075, ¶ 69 (quoting *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 506 (1990)). "The potential for a conflict of interest lies in the supervisor's *authority* to influence or control personnel decisions in areas most likely to affect the employment of subordinates and, thus, most likely to fall within the scope of union representation." (Emphasis in original.) *City of Freeport*, 135 Ill. 2d at 518.

¶ 26 As we previously observed, section 3(r)(1) provides, in relevant 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 time to exercising that authority, State supervisors notwithstanding." 5 ILCS 315/3(r)(1) (West 2012).

¶ 27 "The definition of 'supervisor' contained in the Act has, generally, been reduced to a four-part test and analyzed accordingly." *Chief Judge of Circuit Court of Cook County v. American Federation of State, County & Municipal Employees, Council 31*, 153 Ill. 2d 508, 515 (1992).

"Pursuant to the statute, one alleged to be a supervisor must meet all four parts in order to be excluded from the bargaining unit." *Id.* "The test requires that (1) the supervisory employee must perform principal work substantially different from that of her subordinates; (2) the supervisory employee must have authority to perform some or all of the 11 functions enumerated in section 3(r); (3) the supervisory employee must consistently use independent judgment in the performance of these 11 enumerated functions; and (4) generally, the supervisory employee must devote a preponderance of her time to exercising the authority to handle these 11 functions." *Id.* The second prong of the test is met when the employee performs any one of those 11 functions. *City of Peru v. Illinois State Labor Relations Board*, 167 Ill. App. 3d 284, 289 (1988). Here, the parties focus on two functions: discipline and direction.

¶ 28 As the party seeking to exclude pharmacy supervisors from the bargaining unit, CCHHS carried the burden to prove by a preponderance of the evidence that the position of "pharmacy supervisor" satisfied the statutory definition of supervisor under the Act. See *Secretary of State*, 2012 IL App (4th) 111075, ¶ 70. The parties stipulated that the first prong of the test was satisfied, that the pharmacy supervisors perform work substantially different from their subordinates. We then focus on the three remaining prongs.

¶ 29 The second and third prongs are met when the employer establishes that the employee in question has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority, here to discipline and to direct, and to consistently exercise that authority with independent judgment. "[T]he exercise of supervisory authority must not be routine or clerical in nature, but must involve the consistent use of independent judgment." *City of Freeport*, 135 Ill. 2d at 531.

¶ 30 We first consider whether pharmacy supervisors have the authority to perform or to effectively recommend discipline with independent judgment. Illinois courts have found independent judgment when a supervisor effectively recommends discipline that is almost always adopted by their superior. See *Department of Central Management Services v. Illinois Labor Relations Board, State Panel*, 2011 IL App (4th) 090966, ¶ 193. The determining factor is not the absence of review, but rather, the effectiveness of a recommendation. *American Federation of State, County & Municipal Employees (AFSCME), Council 31 v. Illinois Labor Relations Board, State Panel*, 2014 IL App (1st) 123426, ¶ 44. "The power to issue documented verbal reprimands or to recommend more severe disciplinary action has been found to be authority to discipline." *City of Sandwich v. Illinois Labor Relations Board*, 406 Ill. App. 3d 1006, 1012 (2011) (citing *City of Freeport*, 135 Ill. 2d at 518-19).

¶ 31 The Union first contends that the ILRB's finding that pharmacy supervisors have the authority to effectively recommend the discipline of their subordinates was clearly erroneous because CCHHS did not meet its burden to show specific evidence that pharmacy supervisors effectively recommend discipline. The Union describes CCHHS's evidence on discipline as "vague" and "generalized."

¶ 32 The testimony at the hearing on the question of effectively recommending discipline was divided. The pharmacy supervisors testified that they report the misconduct and issue discipline as directed. Hunter-Morris explained that in one of the exhibits of disciplinary forms, she reported the misconduct to Wrobel, discussed it with Wrobel, and Wrobel instructed her to counsel the employee. Similarly, Hall, Purnell, and Davis each testified that they do not recommend discipline.

¶ 33 In contrast, the pharmacy directors generally testified that the pharmacy supervisor is responsible for observing the misconduct, investigating it, reporting it, and presenting a recommendation. The directors "support" the recommendation of the pharmacy supervisor. Silver and Wrobel testified that they support and approve disciplinary recommendations from their pharmacy supervisors. Walker testified that when she was a pharmacy supervisor, she notified her director of the misconduct, how she planned to proceed, and that her decision effectively determined the disciplinary action taken. One director, Arbo, testified that she discusses the discipline with the pharmacy supervisor to reach a decision. The pharmacy supervisor is responsible for preparing any documentation of the discipline that is given to the subordinate and placed in the subordinate's personnel file. Further, if a disciplinary hearing is held, the pharmacy supervisor is responsible for presenting CCHHS's position.

¶ 34 CCHHS also presented as exhibits documentation of numerous different instances of disciplinary action. All of the documents were signed only by pharmacy supervisors. The documents indicated discipline, counseling, verbal reprimands, and a five-day suspension. The documents also included several employee conference forms, one of which stated that attendance issues "must be corrected or it may lead to progressive disciplinary action." These documents include a description of the misconduct by the supervisor, an indication of the discipline, and the signature of the pharmacy supervisor. The only reference to a director or manager is a "cc" (carbon copy) notation in memos from Hunter-Morris. The Union submitted one email to support its position that pharmacy supervisors do not effectively recommend discipline. In this email, the supervisor wrote "you asked," in reference to the subordinate charged with misconduct, and the director changed the verbiage to, "You stated in a loud and disruptive

manner, are you okay, are you having a good day." The email did not reference the recommended discipline.

¶ 35 In her decision, the ALJ¹ concluded that pharmacy supervisors do not have unilateral authority to discipline their subordinates, but found that "the weight of the evidence supports the conclusion that the Pharmacy Supervisors do have the authority to effectively recommend the discipline of their subordinates." The ALJ addressed the conflict in testimony, finding the testimony of the pharmacy supervisors to be "either unreliable in light of additional evidence or it does not suggest that the Pharmacy Supervisors in fact lack the authority to effectively recommend discipline." Further, "the Pharmacy Supervisors' unsupported assertion that they have no part in the disciplinary decision is unreliable in light of fact that they have the authority to preclude the imposition of discipline by choosing a non-disciplinary course of action." The decision observed that this assertion by the pharmacy supervisors is "belied" by the fact that the disciplinary action forms contain only the signature of the pharmacy supervisor and that the pharmacy supervisors have direct contact with pharmacists and technicians. Contrary to the Union's assertion, the credibility of witnesses was a question for the ALJ. "Determinations as to weight of the evidence and credibility of witnesses are matters left to the agency and will not be disturbed on review unless they are against the manifest weight of the evidence." *UDI No. 2, LLC v. Department of Pub. Health*, 2012 IL App (4th) 110691, ¶ 29. "It is not this court's function to reevaluate witness credibility or resolve conflicting evidence." *Senno v. Department of Healthcare & Family Services*, 2015 IL App (1st) 132837, ¶ 40. "If these issues are merely ones of conflicting testimony or credibility of witnesses, the determinations of the agency should be upheld." *Id.*

¹ While we are reviewing the ILRB's decision, the ALJ drafted the detailed recommended decision and order, which was upheld by the ILRB. All references to the ALJ's findings and reasoning in this decision are to be considered as the ILRB's findings as well.

¶ 36 The ALJ also rejected the examples by the Union to dispute the pharmacy supervisors authority to effectively recommend discipline, noting that the Union referenced an instance in which a director instructed a pharmacy supervisor to impose discipline. The ALJ observed that this example "does not show that the Director rejected the Supervisor's disciplinary recommendation. In fact, there reasonably was no recommendation because the supervisor was not at work when the misconduct occurred and would not have even known about it." The ALJ also distinguished other examples in which no discipline was imposed after a report from the supervisor to the director, but there was no indication that the supervisor had recommended discipline in those cases.

¶ 37 The decision also relied on evidence that pharmacy supervisors had the authority to conduct non-disciplinary conferences to correct subordinates' mistakes. These conferences, according to the collective bargaining agreement, are not considered part of progressive discipline. "It is undisputed that Pharmacy Supervisors make their own determination as to whether, when, and how they should initiate an employee conference with a subordinate."

¶ 38 After reviewing the record, we conclude that the factual findings of the ALJ and the Board were not against the manifest weight of the evidence. The evidence by CCHHS supports a finding that the pharmacy supervisors effectively recommend discipline using independent judgment. The evidence presented to the Board established that pharmacy supervisors report and investigate the misconduct, recommend discipline, and prepare the disciplinary documents. The pharmacy supervisors also have the authority to pursue a non-disciplinary action with a conference.

¶ 39 We next consider whether the Board erred in finding that pharmacy supervisors direct their subordinates using independent judgment. "To 'direct' employees within the meaning of the

Act, supervisors must have the authority to affect the employees' terms and conditions of employment." *Department of Central Management Services v. Illinois Labor Relations Board*, 2012 IL App (4th) 110209, ¶ 29. "The statutory term 'direct' encompasses related oversight functions such as reviewing and monitoring work activities, instructing on how work is to be performed, scheduling work hours, approving time-off and overtime requests, assigning duties, and evaluating job performance." *Secretary of State*, 2012 IL App (4th) 111075, ¶ 74.

¶ 40 Here, the Union argues that pharmacy supervisors exercise mainly a "quality control function without any independent judgment." According to the Union, pharmacy supervisors "may notice when subordinates make errors, correct them, and report that information to the Directors or Managers." CCHHS maintains that the record demonstrates the pharmacy supervisors engage in direction of their subordinates when they review their subordinates' work.

¶ 41 The ALJ's decision found that pharmacy supervisors engaged in supervisory work based on two actions: (1) the investigation of subordinates' mistakes and a conference with guidelines to improve, and (2) evaluations of subordinates with effective recommendations. As to the first action, the ALJ referenced one exhibit of a conference form, in which a pharmacy supervisor described a medication error by a subordinate, and at the conference, the supervisor detailed specific instructions for the subordinate to avoid future errors.

¶ 42 The first action observed by the ALJ referenced one instance of an employee conference brought by the pharmacy supervisor following a medication error. A conference form in the record described a medication error and a "to do list" for the employee to follow for improvement. The list for improvement does offer direction to correct the mistake, but standing alone, this exhibit does not provide enough information to conclude that pharmacy supervisors direct their subordinates.

¶ 43 We find the analysis of the importance of the pharmacy supervisors' evaluations of subordinates to be more significant in determining whether the pharmacy supervisors engage in direction of the subordinates using independent judgment. The record established that pharmacy supervisors are required to evaluate the pharmacists and technicians under their supervision. These evaluations contain sections on job skills and techniques, work habits, quality of work, quantity of work, and ability to work with others. Each sections is broken down into specific tasks and the pharmacy supervisor rates the employee between one and five on each task for each section, totaling overall job factor rating. On the final page, the pharmacy supervisor has space to write a summary of the overall performance of the employee, detailing the positive traits of the employee as well as areas to focus on improvement. The ALJ found these individual ratings were comprised of "subjectively-styled categories, including communication, team work, reliability, and quality of work." The evaluations are placed in the employee's personnel file and are considered in decisions for promotion or transfers and also can lead to additional training. The collective bargaining agreement provides that "ability and fitness to perform the required work" is considered in determining promotion and lay-off preferences. Although it does not specifically reference evaluations, the presence of an evaluation in a personnel file is not insignificant in determining ability and fitness to perform work.

¶ 44 It is undisputed that directors and managers review the evaluations prepared by the pharmacy supervisors, but approval of the evaluations does not negate the independent judgment exercised by the pharmacy supervisors. See *AFSCME*, 2014 IL App (1st) 123426, ¶ 44. However, of the nine evaluations submitted as exhibits, there were corrections in only one evaluation on two of the individual tasks reviewed.

¶ 45 The Union contends that these evaluations do not constitute direction because they do not affect the subordinates' terms and conditions of employment. The record does not support this assertion. According to testimony at the hearing, the evaluations are placed in the employee's personnel file and are considered in decisions for promotion or transfers and also can lead to additional training. The collective bargaining agreement provides that "ability and fitness to perform the required work" is considered in determining promotion and lay-off preferences. Specifically, Norwood testified that if an employee received a poor evaluation and did not improve, then it could be grounds for termination. The Union asserts that the evaluation would not be the reason for termination, it would be the poor performance. We find this view to be too narrow, as the record indicates that the evaluation would be considered as part of the employment determination. That the evaluation would not solely be the cause of termination does not negate the impact a poor evaluation could have on an employee. The Union also argues that there was no evidence that an employee had been terminated in part due to a poor evaluation, but the absence of evidence does not make the importance irrelevant. It could also logically follow that no evidence was presented because employees improved following evaluations and termination was never required.

¶ 46 Our review of the record does not reveal a clear indication that the Board erred in upholding the ALJ's determination that pharmacy supervisors direct their subordinates using independent judgment. The evidence regarding the evaluations established that pharmacy supervisors exercised subjective judgment in reviewing their subordinates' work performance and the evaluations are generally approved on review by a superior with little, if any, changes. Further, the record shows that the evaluations can impact the terms and conditions of an

employee's job conditions. Accordingly, we find that the Board's conclusion that pharmacy supervisors direct their subordinates was not clearly erroneous.

¶ 47 Finally, we must determine whether pharmacy supervisors spend a preponderance of their work time engaged in supervisory functions. Courts have interpreted "preponderance" "to mean that the most significant allotment of the employee's time must be spent exercising supervisory functions." *City of Freeport*, 135 Ill. 2d at 532. "In other words, the employee must spend more time on supervisory functions than on any one nonsupervisory function." *Id.* at 533.

¶ 48 Two tests to consider how a preponderance of time may be analyzed have arisen, one numerical and the other qualitative. The ALJ's decision considered both tests in reaching the conclusion that pharmacy supervisors spend a preponderance of their time engaged in supervisory functions.

¶ 49 The first test considers "whether the individual is a supervisor or an employee a majority of his or her employment time." *Department of Central Management Services v. Illinois State Labor Relations Board*, 249 Ill. App. 3d 740, 747 (1993). The ALJ analyzed this first test as follows.

"Pharmacy supervisors spend approximately 60 to 80% of their work time engaged in supervisory direction because this is the amount of time they spend reviewing the quality of their subordinates' work. These percentages are an accurate picture of the Pharmacy Supervisors' supervisory time even though one aspect of their review (assessment of work quantity) is routine. It is counterintuitive to separate the assessment of quantity from the assessment of quality in considering the time requirement because

an employee's productivity is simply one measure of the quality of that employee's work. Separating out the two inquiries would improperly place emphasis on the number of times a Pharmacy Supervisor had actually corrected a subordinates' work which would not be dispositive of petitioned-for employees' actual authority. Indeed, a good Pharmacy Supervisor with attentive and dutiful subordinates may need to issue corrective guidance very rarely, despite the fact that her primary function is to review various aspects of her subordinates' work."

¶ 50 The ALJ also observed that it was significant to consider the number of subordinates that each pharmacy supervisor oversaw, given the time involved in their duties, especially discipline.

¶ 51 We agree with the ALJ that the number of instances of guidance is not an accurate measure of supervisory authority, but when considering the totality of time, the pharmacy supervisors did spend a preponderance of time engaged in supervisory functions under this test. See *Department of Central Management Services v. Illinois State Labor Relations Board*, 2012 IL App (4th) 110013, ¶ 84 ("the number of times a supervisor exercises his authority is not dispositive"); *City of Freeport*, 135 Ill. 2d at 518 (finding the ILRB's "reliance upon the number of times such authority was exercised was improper").

¶ 52 The second test considers that qualitative aspects, whether the supervisory functions are more significant than nonsupervisory functions.

" 'Preponderance' can mean superiority in numbers or superiority in importance. (Webster's Third New International Dictionary 1791 (1986).) If an employee spends 51% of employment time

doing administrative functions and 49% in supervisory functions, the most significant part of the job may not be the administrative matters because of the importance of employee relations. Whether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions. No one can expect mathematical certainty in these types of cases." *Department of Central Management Services v. Illinois State Labor Relations Board*, 278 Ill. App. 3d 79, 86 (1996).

¶ 53 Under this test, the ALJ concluded that

"the most important components of the Pharmacy Supervisors' work are supervisory direction and discipline because the very purpose of the Pharmacy Supervisor position is to maintain quality control of their subordinates' work. Moreover, the Pharmacy Supervisors achieve quality control in part by assessing their subordinates' mistakes, determining whether to initiate employee conferences or to effectively recommend discipline, and giving employees guidance on how to improve."

¶ 54 Based on the record in this case, including the testimony at the hearing and exhibits, we cannot say that the Board's decision to uphold the ALJ's finding that the pharmacy supervisors spend a preponderance of their work time engaged in supervisory functions was clearly erroneous. Since we have found that the Board did not err in deciding that all four components to determine if the "pharmacy supervisor" position constitute "supervisor" within the meaning of

section 3(r) of the Act have been met, we uphold the decision of the Board to dismiss the petition by the Union. "Pharmacy supervisors" are supervisors under the Act and cannot be added to the bargaining unit.

¶ 55 Based on the foregoing reasons, we affirm the decision of the Illinois Labor Relations Board, Local Panel.

¶ 56 Affirmed.