

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

SCOTT COUNTY,)	
Public Employer,)	CASE NO. 102412
)	
and)	
)	
SCOTT COUNTY CORRECTIONS)	
SERGEANTS ASSOCIATION,)	
Employee Organization/Petitioner.)	

DECISION ON APPEAL

This case is before the Public Employment Relations Board (PERB) on the Scott County Corrections Sergeants Association’s appeal of a proposed decision and order issued in PERB Case No. 102412. In this case, the Scott County Corrections Sergeants Association (“Association”) filed a unit determination and representative certification petition pursuant to Iowa Code section 20.13 and 20.14. The County resisted the petition alleging the positions at issue are excluded from collective bargaining as they are supervisors and confidential employees.

The ALJ held an evidentiary hearing on October 23, 2020. The ALJ issued a proposed decision on March 7, 2022, in which the ALJ concluded the positions at issue are supervisors and thus excluded from collective bargaining. The ALJ dismissed the Association’s petition.

On March 10, 2022, the Association appealed the proposed decision.

Counsel for the parties, Nathan Willems for the Association and Aaron Hilligas for the County, presented oral arguments via video conference to the Board

on May 10, 2022. Prior to the oral arguments, both parties filed a brief outlining their respective positions.

On Board review the Board has the same power it would have had if the Board had initially made the determination except that the Board may limit the issues with notice to the parties or by rule. The Board “may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error.” Iowa Code § 17A.15(3). Pursuant to PERB rule 621—9.5 on this appeal to the Board, we have utilized the record as submitted to the ALJ.

After a review of the ALJ’s proposed decision, the record, and the parties’ briefs and arguments, we find the County has demonstrated the employees at issue are supervisors and excluded from collective bargaining.

FINDINGS OF FACT

The record supports the ALJ’s findings of fact, as set forth in his proposed decision and order attached as “Appendix A.” We adopt the ALJ’s factual findings as our own with the following additions.

The ALJ properly laid out the evaluation structure and the sergeants’ role in the evaluation process. As correctly noted by the ALJ, the evaluation does determine whether the officer receives an annual step pay increase. Upon review, the Board clarifies that Scott County no longer offers a bonus for correctional officers based on the scoring in the evaluation. The Board also clarifies the record regarding the role of the sergeants in implementing a performance improvement

plan for underperforming employees and the way the performance improvement plan interplays with the evaluation process.

The record provides that employees receiving below a three on their evaluation need to be on a performance improvement plan. The general policy of the County provides that if an employee receives an overall score of below three during their evaluation, a performance improvement plan must be attached to the evaluation. The testimony in the record regarding the Scott County Jail corroborates this policy. The record also establishes that if the sergeants score an employee below a 3.0, that employee would be started on a performance improvement plan. The lieutenant or the captain ultimately decide whether to place a correctional officer on a performance improvement plan. If a sergeant scores an employee below a 3.0 without a documented history of problems, the supervisor will identify the evaluation and scoring as inappropriate. As long as the employee scores a 3.0, that employee would receive the pay adjustment.

CONCLUSIONS OF LAW

We agree with the ALJ's determinations and conclusions as set out in Appendix A as to the issues of whether the sergeants are confidential employees and whether the sergeants are supervisory employees based on their duty to assign or direct work. We make the following additions and modifications to the ALJ's determinations.

Assign and Direct Employees

The Association argues on appeal the sergeants are more like leadpersons and are not supervisory in nature when assigning or directing work. The

Association contends the ALJ incorrectly relied on the case of *City of Oskaloosa*, when *Linn County* was more applicable. See *City of Oskaloosa and Oskaloosa Ass'n of Prof'l Fire Fighters*, 95 PERB 5173; *Linn County and Int'l Bhd. of Elec. Workers, Local 204*, 2014 ALJ 8719.

In *Linn County*, the ALJ found that when sergeants reassign or redirect deputies due to absence or inmate fight, the sergeants are acting out of routine, rather than using independent judgment. *Linn County*, 2014 ALJ 8719 at 24. The sergeants in that case were restricted by minimum staffing levels and deferred to command staff to schedule additional employees for unusual events or circumstances. *Id.* Sergeants typically did not grant overtime and could only approve last minute leaves in accordance with the collective bargaining agreements. *Id.* The ALJ found in that case the record established by the County as to the sergeants' authority to direct and assign employees was "generalized, conclusory, and lacking in tangible examples of the sergeants' exercise of their purported authority." *Id.* at 23.

In *City of Oskaloosa*, the Board found the captain's command of the fire scene to be supervisory. *City of Oskaloosa*, 95 PERB 5173 at 18. The captain determined whether additional personnel or equipment was needed, had the authority to call in off-duty firefighters or summon fire crews from surrounding authority without prior approval from the chief. *Id.* at 7. At the fire scene the captain initially assessed whether a rescue was required, the stage of the fire, and where to locate necessary equipment. *Id.* The captain also designated personnel to execute the rescue, and determined who would enter the structure first. The

captain could also adjust fire fighter activity. *Id.* The Board noted the captain exercised independent discretion to call in additional help from off-duty Oskaloosa personnel and other fire departments. *Id.* at 18–19.

After a review of the facts in the instant case and the case law, the Board finds the ALJ’s reliance on the *Oskaloosa* decision is not misplaced. Both the *Oskaloosa* case and the *Linn County* case correctly explain the general principles for determining when an employee is acting with the requisite independent judgment to determine the employee is a supervisor within the meaning of the statute. The outcome of each unit determination case depends on the record developed by the parties and the absence or presence of evidence establishing actual supervisory authority. *Linn County*, 2014 ALJ 8719 at 10. The facts in other cases are always distinguishable to some degree because of the complex gradations of the authority. *City of Oskaloosa*, 1995 PERB 5173 at 17. When determining whether supervisory authority exists, PERB focuses more on consistency of the reasoning of other cases rather than the facts of other cases. *Id.*

In this case, the Board agrees with the ALJ’s conclusions that the sergeants act with independent judgment when responding to emergency situations, which is a regular aspect of the operations sergeants’ job. In responding to such emergencies the sergeants make managerial decisions about the use and allocation of resources for the facility and act in the best interest of the facility. In these emergency situations, the sergeants make decisions regarding whether to call the CERT team, the appropriate action to be taken under the circumstances, whether to radio for additional staff, whether to hold over correctional officers, and when to

address these emergent situations, such as a trashed cell. In making these types of decisions, the sergeants exercise independent judgment beyond that of an experienced employee, and instead as a manager for the facility. Unlike in *Linn County*, the County in this case provided tangible examples of supervisory authority. In so doing, the County demonstrated the sergeants actions in these emergent situations were not routine, and required independent judgment to conduct managerial decision-making. *Cf., City of Davenport v. Public Emp't Relations Bd.*, 264 N.W.2d 307, 319 (Iowa 1978) (finding the employees acted as leadpersons when making tactical decisions rather than managerial decisions).

We agree with the ALJ's conclusions regarding the supervisory authority of sergeants when assigning and directing work, and we adopt those conclusions as our own. The County has demonstrated that correctional sergeants exercise supervisory authority when assigning and directing work to employees, and are thus excluded from the provisions of chapter 20.

Reward Employees

As correctly stated in the proposed decision and order, conducting evaluations itself is not a statutory supervisory criterion. *City of West Des Moines and West Des Moines Ass'n of Prof'l Firefighters, Local 3586*, 1995 PERB 5158 at 16 (finding lieutenants were supervisory as they effectively recommended rewards when they used independent judgment and chief conducted no de novo review of the evaluation that resulted in merit increases when receiving a score of 3.0 or above). To demonstrate the sergeants have supervisory status on the basis of

evaluating employees, the County must show the sergeants' reward or effectively recommend the reward of employees.

Previously, Scott County gave bonuses that were dependent upon the evaluations. That is no longer the practice. However, the employees' step increase is linked to the results of the employees' evaluation. As noted in the ALJ's proposed decision, a correctional officer receiving a score of 3.0 or above receives a step increase. If the correctional officer receive below a 3.0 on the evaluation, that employee would not receive a step increase.

Based on the record, the sergeants have the discretion to determine what score an officer has earned on the evaluation. However, the sergeants do not have the authority to determine whether to score an officer below a 3.0 and thereby prevent that officer from receiving a step increase. The testimony in the record demonstrates that sergeants can only score an employee below a 3.0 if the employee is on a performance improvement plan. Those performance improvement plans are approved by a higher authority. So the sergeants do not have the authority to determine whether the employee should receive less than a 3.0 or a 3.0 or above, which entitles the employee to a step increase. That authority rests with the lieutenant or captain.

Although the sergeants use independent discretion when scoring employees' evaluations, the sergeants do not use independent judgment nor do they have the authority to determine or effectively recommend when an employee is below or above the threshold needed for the reward of the step increase. Therefore, the sergeants do not have the authority to reward or effectively recommend the

“reward” of the step increase for an employee during the evaluation process. The County has not shown sergeants are supervisory on this basis.

The County established the correctional sergeants are supervisory based on their authority to assign and direct work. The record does not contain enough information to determine the remaining sergeants are appropriate to include in a separate bargaining unit.

Accordingly, we issue the following:

ORDER

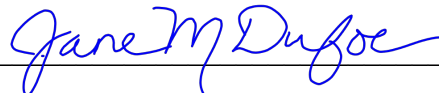
The Scott County Corrections Sergeants Association’s combined unit determination/representative certification petition is dismissed.

DATED at Des Moines, Iowa this 29th day of June 2022.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Chairperson



Jane M. Dufoe, Board Member

Filed electronically.
Parties served via eFlex.

employees. Further, the undersigned took official notice of PERB Case No. 7140, wherein a hearing officer concluded the Scott County corrections lieutenants and sergeants were supervisory employees. Both parties filed post-hearing briefs on January 11, 2021.

Based upon the entirety of the record, as well as the parties' arguments, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

Scott County is a public employer within the meaning of Iowa Code section 20.3(10) and the Scott County Corrections Sergeants Association (Association) is an employee organization as defined in Iowa Code section 20.3(4). The County is currently a party to six collective bargaining agreements (CBAs) covering six bargaining units of county employees. The petitioners in this case, the corrections sergeants employed in the Scott County Jail, are not, nor have ever been, included in any of the existing bargaining units of Scott County employees. However, the corrections sergeant position has been the subject of two prior contested cases before the Public Employment Relations Board (PERB or Board). A brief overview of those cases is pertinent to the case at hand.

Prior contested cases

In 1980, PERB approved a bargaining unit of Scott County Jail employees that included correctional officers and certified the Scott County Correctional Association to represent the unit for purposes of collective bargaining.¹ Through

¹ See PERB Case Nos. 1562 & 1572.

subsequent amendments, the job classifications included in the unit were updated as positions changed and the employee organization's name was changed to the Scott County Corrections and Communications Association/Chauffeurs, Teamsters & Helpers, Local Union No. 238 (Teamsters).²

In 1982, Teamsters petitioned to amend the bargaining unit to include the position of "lead correctional officer," also referred to as "shift supervisor."³ The County resisted the petition arguing that lead correctional officers were excluded from coverage by chapter 20 because they were supervisory employees. On appeal, the Board agreed with the County concluding the position was supervisory, noting that lead correctional officers called in replacements, assigned employees to jobs, and exercised other personnel functions without prior approval from their supervisors.

In 2005, the jail lieutenants, sergeants, and food service manager filed a petition seeking bargaining unit inclusion in a new and independent unit separate from the correctional officers.⁴ The County again resisted the petition arguing the lieutenants, sergeants, and food service manager were supervisory employees.

After a hearing on the matter, an Administrative Law Judge (ALJ) issued a decision agreeing with the County that the jail lieutenants, sergeants, and food

² See PERB Case Nos. 1860, 3105, 3924, 2133, 2134, 2135, 2276, 3105, 3924, 4208, 5405, 5668, and 102320.

³ See PERB Case No. 2135.

⁴ See PERB Case No. 7140.

service manager were supervisory employees. The ALJ concluded that the positions exercised the supervisory authority to assign, direct, discipline, and reward employees using independent judgment in the interest of management. *See Scott Cnty.*, 2005 ALJ 7140 at 19-20.

Specifically, the ALJ concluded all three positions possessed the supervisory authority to discipline because the positions had the authority to issue subordinates cautionary notices and written reprimands without prior approval from higher-ranking officers. *See id.* at 19. Further, the ALJ concluded the lieutenants and sergeants possessed the supervisory authority to assign and direct because the lieutenants and sergeants balanced multiple considerations not contained in the general rules or post orders when assigning officers to their posts, thereby demonstrating independent judgment. *See id.* at 17.

As to the supervisory power to reward, the lieutenants, sergeants, and food service manager performed annual evaluations of their subordinates and if the subordinate employee received an aggregate score of 4.0 (exceeds expectations), the employee received a \$500 bonus. *See id.* at 7-8. Although higher-ranking officers reviewed the evaluations before they were finalized, the ALJ found:

While I do not discount or disbelieve that there have been occasions where evaluations have been substantively changed, the frequency of occurrence is sufficiently rare that the evaluations performed by the petitioned-for employees on subordinates stay substantially unchanged as the regular and routine rather than the rare exception of substantive change.

Id. at 18. Therefore, because positive performance evaluations resulted in bonuses and because higher-ranking officers only rarely changed evaluations,

the ALJ concluded the lieutenants, sergeants, and food service manager had authority to effectively recommend rewards for subordinates and, were therefore, supervisory employees. *See id.*

In the instant case, the corrections sergeants once again seek bargaining unit inclusion in an independent unit separate from the correctional officers. The sergeants seek to be represented by the Scott County Corrections Sergeants Association. Teamsters and the bargaining unit of correctional officers do not resist the sergeants' request for a separate unit with representation by the Association.

Corrections sergeants' job duties

The Scott County Jail is part of the Corrections Division of the Scott County Sheriff's Office. The jail operates in a paramilitary fashion with a chain of command structured by rank. As a paramilitary organization, the jail's General Orders are mandatory directives and the chain of command reflects the greater authority of each higher rank. The Jail Administrator, a major who reports directly to the Sheriff, runs the jail followed in rank by the Assistant Jail Administrator, a captain.

Beneath the captain, the jail is organized into two divisions: a Programs Division and an Operations Division. On the programs side, a programs sergeant reports directly to the captain. The program sergeant oversee four custodial/community restoration officers, two programs coordinators, the alternative sentencing coordinator, and the senior accounting clerk.

On the operations side, two lieutenants serve below the captain followed

in rank by twelve operations sergeants. The twelve operations sergeants oversee approximately sixty-four correctional officers. Additionally, while technically part of the Programs Division, the training coordinator sergeant, responsible for training staff and new hires, reports to an operations lieutenant.

The major, captain, programs sergeant, and training coordinator sergeant typically work 40-hour weeks consisting of eight-hour days Monday through Friday. Operations staff are scheduled to one of four, twelve-hour rotating shifts. Each shift has a set minimum number of corrections staff deemed necessary to maintain jail security. Each twelve-hour shift requires at least two sergeants with a minimum of thirteen correctional officers on day shifts and eleven officers on night shifts.

One lieutenant works day shifts on a rotating basis and the other works night shifts on a rotating basis. Therefore, approximately fifty-percent of the time sergeants are the highest-ranking officers present at the jail; however, higher-ranking officers are on-call at all times. When off duty, sergeants are not on-call and are not expected to answer work calls or emails.

To determine staffing for each operations shift, twice each year, the major, captain, and lieutenants assign staff to one of the four rotating shifts via a bidding procedure outlined in the correctional officers' CBA. The command staff then produces Post Rotation Calendars for each shift, assigning all officers on the shift to posts for 45-day periods.

To facilitate continuity of operations, the jail has hundreds of general orders providing directives and instructions for nearly all aspects of jail

operations. Corrections sergeants are responsible for maintaining the safety, security, and orderly operation of the jail by supervising jail staff, volunteers, corrections officers, and inmates and for ensuring compliance with the jail's general orders, policies, and procedures. Submitted into evidence were copies of the general orders covering "Staff Assignments," "Staffing Plan," "Shift Briefing/Reporting to Work," "Staff Accident and/or Injury," "Force," "Housing Unit Supervision," "Staff Selection," "Staff Promotion," and "Staff Grievances."

As to operations sergeants' standard day-to-day responsibilities, the general orders provide that prior to the start of each shift operations sergeants consult the Post Rotation Calendar to assign correctional officers to their scheduled posts. If absences result in a shift falling below the set minimum staffing level, sergeants are required to fill the vacancies by calling for voluntary overtime and/or assigning mandatory overtime to officers off the 45-day rotation list pursuant to the jail's overtime procedures. After completing the post assignments, sergeants brief the correctional officers on matters such as inmate releases, classification moves, major/minor incidents from the prior shift, head counts, and transfers.

For each post, general orders delineate operations, tasks, and reports that officers must complete each shift. Sergeants are responsible for directing and observing officers to ensure all tasks are completed in accordance with the jail's policies and procedures. Additionally, sergeants review officers' incident reports, disciplinary reports, and post logs for accuracy and quality. At the hearing, Operations Sergeant Shaun McDonough summarized his typical job duties as

follows:

As a sergeant I pretty much observe and report to my superiors. I assure that the general policies are being followed, I assure that county policies are being followed. If there are any issues, I document an [incident report] and I submit it to my superiors for review.

I work on a shift of 11 correctional officers. I primarily work in the housing units. So I go around touring the housing units, make sure they're orderly and run according to policy. I identify any issues and once again I document it in an incident report and I submit it to my supervisors for review.⁵

While the general orders and strict chain of command provide sergeants limited discretion to assign and direct day-to-day operations, the operations sergeants have broader discretion to resolve unexpected or emergency situations. As six operations sergeants explained in a position analysis questionnaire (PAQ) submitted into evidence:

Corrections Sergeants are the primary staff members who respond to emergent situations in the facility[,] which can range from dynamic incidents such as assaults to a variety of medical emergencies, as well as numerous behavioral/mental health crisis. In these situations[,] the Corrections Sergeant is the primary entity who decides/initiates an appropriate response, allocates necessary resources, takes direct action, and ensures the facility returns to normal operation post incident.⁶

Operations sergeants' greater independence to assign and direct officers during emergencies is reflected in the general orders. For instance, General Order 15001.22(A) governing use of force states:

Procedure A: Force Used to Move an Inmate or New Arrest

2. If an inmate refuses to lockdown...

⁵ Tr. pp. 120-121.

⁶ County Exhibit O, p. 1.

5. The Shift Supervisor *determines the appropriate action* and if additional Corrections Staff are needed.
6. *If necessary*, the Shift Supervisor radios for additional Corrections Staff to respond to the location of the disturbance.

8. *If necessary*, the Shift Supervisor has CERT respond to the area and takes *the appropriate action and force* to control the situation and restrain the inmate under the supervision and direction of the CERT Command Sergeant or Leader.

10. The Corrections Staff refrains from moving an inmate or new arrest by force without the necessary number of Corrections Staff needed to assist, *based on the Shift Supervisor's direction...*

(Emphasis added).

Although General Order 150001.22(A) provides a process for staff to follow when inmates refuse to lockdown, the terms “if necessary” and “determines appropriate action” are discretionary and provide sergeants the authority to respond to a situation in the manner, and with the personnel, they deem necessary and appropriate. Similar discretionary language is contained in GO-15001.22(B) governing physical altercations between inmates. In their PAQs, the operations sergeants noted that dealing with disruptive or combative inmates was a regular occurrence on the job and, at hearing, Lieutenant Jon Ronnebeck affirmed that dealing with unruly inmates is not a rare occurrence.

If an emergency arises near the end of a shift, operations sergeants can assign overtime and hold officers over until the emergency is resolved. However, as noted above, outside of emergencies, sergeants’ authority to assign overtime is limited to the overtime procedures contained in the general orders and the correctional officers’ CBA.

In the Programs Division, the programs sergeant oversee two program

coordinators, who develop inmate programs, the custodial staff/community restoration officers, and approximately 95 volunteers. Among other duties, the programs sergeant is responsible for purchasing, inventory, scheduling tours, and organizing inmate visits, marriages, and grievances.

Like the Operations Division, the general orders provide detailed directives and instructions for nearly all aspects of the programs staff's daily operations. The programs sergeant is responsible for ensuring officers and volunteers comply with the jail's orders, policies, and safety procedures. However, while the programs sergeant assists during emergencies as needed, the record does not reflect that programs sergeants are responsible for assigning and directing officers during emergencies.

There is limited evidence in the record concerning the duties and responsibilities of the training sergeant. However, according to a PAQ, the training sergeant coordinates, implements, and supervises a comprehensive training plan designed to train new hires and provide staff with the skills necessary for specific jobs within the facility. The training sergeant helps select, train and supervise the field-training officers responsible for observing and educating correctional officer-trainees during their probationary period. Additionally, the training sergeant shadows correctional officer-trainees and reviews performance scores, evaluations, and other written documentation to evaluate performance and ensure proper administration of the training program.

After an initial training period, each correctional officer is assigned to a "team sergeant" who observes and supervises the correctional officer as part of

the sergeants' "team" of officers throughout the year. From the record, it appears all corrections sergeants—operations, programs, and training—act as "team sergeants" to correctional officers on their shifts.

Team sergeants are responsible for completing annual performance evaluations for the correctional officers on their "team." The performance evaluation is an established form with different categories of job assignments and skillsets. In each category, the sergeant rates the officer on a one through five scale—one meaning "unsatisfactory performance" and five meaning "exceptional performance"—and writes comments to explain the rating and provide feedback. The ratings are then aggregated and averaged yielding a composite score of the officer's performance during the evaluation period. A composite score of "3" or above is considered satisfactory.

Once complete, sergeants submit the performance evaluations to their captain or lieutenant for review. At hearing, Lieutenant Ronnebeck testified that he gives sergeants' ratings significant weight because sergeants, "[are] the ones who are reviewing everything and keeping the jail running." Ronnebeck explained that lieutenants "look [the evaluations] over to make sure that nothing was missed, such as a past discipline issue or any other issue, and then the lieutenant will approve it." Ronnebeck stated that he has never required a sergeant to change a rating on a performance evaluation and, over the past three years, he has only recommended changing two scores out of the approximately 90 performance evaluations he has reviewed.

Pursuant to County policy and the correctional officers' CBA, an officer's

final composite score on their annual performance evaluation determines whether the officer receives an annual step pay increase. Specifically, the officers' CBA states, "Employees will advance annually through the ten or fourteen steps on their anniversary date unless they receive an overall performance rating of less than 3.0." Thus, the County uniformly grants officers a step pay increase if the officer receives a composite score of "3" or above.

Although sergeants are responsible for overseeing and evaluating correctional officers, sergeants' authority to discipline officers is limited. Jail policy recognizes two forms of informal discipline—verbal warnings and cautionary letters—and three forms of formal discipline—written reprimands, suspensions, and dismissals. To issue more than a verbal warning, corrections sergeants must receive approval from their superior officer.

Specifically, if sergeants observe behavior they determine warrants corrective action, sergeants complete an incident report recommending disciplinary action and submit it to their superior officer for review. At hearing, Lieutenant Ronnebeck testified that he typically approves sergeants' recommendations "as long as [he does not] feel that it is too severe for the offense that has taken place." Moreover, while the record shows sergeants technically possess the authority to issue verbal warnings without prior approval, Lieutenant Ronnebeck testified that, in most cases, he gives permission or direction to sergeants before they do so.

As to hiring, corrections sergeants play a limited role in the jail's process for hiring new employees. When hiring new officers, the jail assembles an

interview team to conduct a first round of interviews with all applicants who pass an initial screening. The interview team consists of a sergeant, a lieutenant or captain, a correctional officer, and a representative from human resources.

Prior to the interviews, human resources provides the interview team with a list of questions to ask each applicant. During the interviews, the team members take turns asking questions from the list and write down their impressions of each applicant. After the interviews, the team members' notes are sent up the chain of command for consideration by the captain and major. At hearing, Sergeant William Hyde testified that upper management does not simply "rubber stamp" the interview team's suggestions; Hyde said occasionally individuals are hired despite the interview team having expressed concerns.

Corrections sergeants do not participate on interview teams associated with staff promotions. Rather, when promotional opportunities arise, the command staff requests sergeants' thoughts on each candidate and sergeants provide whatever firsthand information they have on each eligible candidate. The command staff then considers the sergeants' feedback when deciding whom to promote.

As to grievances, when correctional officers raise contract grievances, the CBA provides that step 1 of the grievance procedure is an oral discussion with the Captain or his/her designee. At hearing, Programs Sergeant William Hyde testified that sergeants have no role in adjusting grievances and that formal grievances are handled by lieutenants or higher.

Finally, the record shows that the County has historically included a

corrections sergeant on management's bargaining team when negotiating the correctional officers' CBA. At hearing, Sergeant McDonough acknowledged having been part of management's most recent bargaining team and Assistant County Administrator/HR Director Mary Thee testified that for the past four correctional officer CBA negotiations, a corrections sergeant has participated on management's bargaining team each time.

CONCLUSIONS OF LAW

The issues in this combined unit determination/representative certification case is whether the Scott County Jail corrections sergeants are supervisors within the meaning of Iowa Code section 20.4(2) and/or confidential employees under Iowa Code sections 20.3(3) and 20.4(3). These issues will be addressed independently, beginning with the supervisory issue followed by the confidential employee issue.

Supervisory issue

The Public Employment Relations Act (PERA) is written in broad terms to allow a large number of public employees to be eligible for coverage under its provisions. *See Iowa Ass'n of Sch. Bds. v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987); *see also City of Eagle Grove*, 2012 PERB 8459 at 6. The Board, therefore, interprets Iowa Code section 20.4 exclusions narrowly to accomplish that objective. *See City of Eagle Grove*, 12 PERB 8459 at 6. The party asserting the exclusion bears the burden of establishing the exclusion applies. *Id.* at 7.

Iowa Code section 20.4(2) defines a "supervisory employee" as:

...any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment...

The statutory definition of a supervisor is written disjunctively. Therefore, an employee's authority to accomplish any one of the enumerated functions is sufficient to classify the employee as a supervisor. *See State of Iowa Dep't of Personnel v. PERB*, 560 N.W.2d 560, 562 (Iowa 1997); *see also City of Davenport v. PERB*, 264 N.W.2d 307, 314 (Iowa 1978). However, the employee must exercise the function in reality, not merely on paper. *See City of Davenport*, 264 N.W.2d at 313; *see also City of Des Moines*, 2009 PERB 7933 at 66. The statute requires evidence of actual supervisory authority translated into "tangible examples." *City of Davenport*, 264 N.W.2d at 314. The question of whether an employee is a supervisor is a fact question involving "a case-by-case approach in which the agency gives practical application of the statute to the infinite and complex gradations of authority which may exist in employment." *City of Davenport*, 264 N.W.2d at 313; *City of Des Moines*, 2009 PERB 7933 at 66.

To rise to the level of supervisory status, the statute requires that for each enumerated function the employee "1) have authority 2) to use independent judgment 3) in performing such supervisory functions 4) in the interest of management." *See City of Davenport*, 264 N.W.2d at 314. These requirements are conjunctive, meaning all four requirements must be established for any one function to rise to the level of supervisory status. *Id.*

In making these determinations, the courts and Board have developed the term “leadworker,” which recognizes a job within an employer’s operation designed to provide a leadership role necessary to support and maintain management’s interests. *See City of Council Bluffs*, 2000 ALJ 6038 at 5; *see also City of Davenport*, 264 N.W.2d at 319. However, while employees defer to leadworkers’ role and work experience to complete work established by management, leadworkers possess less authority than that of a true supervisor. *See City of Davenport*, 264 N.W.2d at 319.

The status determination depends upon how completely the responsibilities of the position identify the employee with management. *See id.* at 314. For supervisory status to exist, this identification must be substantial. *See City of Council Bluffs*, 2000 ALJ 6038 at 5. As such, repetitive or rote tasks are not considered supervisory nor are functions requiring little more than the use of common sense. *See City of Davenport*, 264 N.W.2d at 314. “An individual who merely serves as a conduit for orders emanating from superiors acts routinely.” *Id.*

Finally, an employee is also supervisory if the employee has the power to “effectively recommend” the exercise of any one of the enumerated supervisory functions listed in section 20.4. Effective recommendation is one, which under normal policy and circumstances, is made at the chief executive level or below, and is adopted by higher authority without independent review or *de novo* consideration as a matter of course. *See City of Davenport*, 264 N.W.2d at 321.

In this case, the County asserts corrections sergeants are supervisory

employees because they possess direct authority to discipline, assign, direct, and adjust employee grievances. Additionally, the County argues sergeants possess the supervisory authority to effectively recommend discipline, hiring, promotions, and rewards.

The Association acknowledges sergeants perform several of these functions. However, the Association contends the corrections sergeants are not supervisory because their authority is highly circumscribed by the jail's extensive General Orders, the application of which does not involve the sergeants' use of independent judgement. The Association argues, in effect, that corrections sergeants are leadworkers as oppose to true supervisors.

With respect to the section 20.4(2) statutory criteria, corrections sergeants do not have authority to hire, transfer, suspend, layoff, recall, promote, discharge, or reward correctional officers on their own motion. Moreover, there is nothing in this record which would warrant the conclusion that sergeants are supervisory employees based upon the authority to adjust employee grievances. As discussed above, pursuant to the officers' CBA, step one of the correctional officers' grievance procedure is a meeting with a lieutenant or higher-ranking officer. Corrections sergeants play no role in the grievance process.

As to discipline, the record supports a finding that sergeants possess authority to address employees' perceived shortcomings by coaching, counseling or the issuance of verbal warnings. However, sergeants do not possess authority to issue cautionary letters, written reprimands, suspensions, or dismissals on their own motion. As the Iowa Supreme Court has held, "For an employee to be

a supervisor based on authority to discipline, [he or she] must have more than the power to issue verbal reprimands.” *City of Davenport*, 264 N.W.2d at 321. Consequently, corrections sergeants do not possess direct supervisory authority to discipline other employees.

As with several of the other indicia of supervisory status discussed below, any involvement of corrections sergeants in hiring or promoting is in the form of recommendations that certain actions be taken. As noted above, the Board has long defined the supervisory authority to “effectively recommend” as involving a recommendation which is adopted by higher authority without independent review or *de novo* consideration as a matter of course. *See City of Cedar Falls*, 2006 PERB 6868 at 22; *see also Davenport Cmty. Sch. Dist.*, 1976 PERB 72 at 8. In this case, sergeants’ input in hiring and promotions does not rise to the level of section 20.4 supervisory functions.

While the importance of the sergeants’ recommendations for promotions is undisputed because of their firsthand knowledge of the officers’ day-to-day work, the sergeants do not “effectively recommend” within the meaning of section 20.4. When a promotional opportunity arises, the sergeants provide whatever firsthand information they have on each eligible candidate to the captain. The sergeants do not participate in the interviews of the eligible candidates and ultimately the command staff determines which officer to promote. Regardless of whether sergeants’ comments in this process constitute feedback or are true recommendations, it is subject to further review and consideration by the chain of command and is thus, not “effective.” *See Linn Cnty.*, 2014 ALJ 8719 at 20-

21.

Similarly, while sergeants participate in the jail's hiring process as part of an initial interview team, the sergeant is just one of several team members—which also includes a non-supervisory correctional officer—and the team's recommendations are consolidated and independently considered by the command staff, who make the final decisions as to whom to hire. As the command staff plainly review and consider the interview teams' recommendations, the recommendations are not “effective” within the meaning of section 20.4(2). *See City of Cresco*, 1999 PERB 5905 at 7-8 (concluding assistant chief of police was not a supervisor due to his involvement on a hiring committee because he did not independently make hiring decisions and his vote on the committee was not an “effective recommendation”).

Corrections sergeants also recommend employee discipline to their superior officers. However, while sergeants may exercise independent judgment in deciding whether to make a disciplinary recommendation, the record does not support the conclusion that their recommendations are adopted without independent review or de novo consideration as a matter of course. In fact, the record suggests the opposite. At hearing, Lieutenant Ronnebeck explained that he typically listens to sergeants' disciplinary recommendations “as long as I don't feel that it is too severe for the offense that has taken place.” Therefore, as higher-ranking officers independently evaluate the appropriateness of sergeants' recommended discipline, the recommendations are not “effective” within the meaning of section 20.4(2).

This brings us to the County's claim that sergeants are supervisory employees based upon their authority to assign or their responsibility to direct other employees. With respect to the assignment and direction of other employees, it is evident that corrections sergeants are in a general sense "in charge" of their shifts. The question, however, is whether their direction of other employees requires the use of independent judgment or is of a routine nature.

The Association contends, and the undersigned agrees, that through its comprehensive general orders, nearly all of the jail's standard day-to-day practices, procedures, and operations are prescribed in such detail that the functions are essentially routine and do not require the use of independent judgment contemplated by section 20.4(2). For instance, staffing and post assignments are set by the command staff's biannual shift schedule and 45-day post rotation calendars; sergeants' authority to grant overtime is limited to the procedures set out in the officers' CBA; and for each post, the general orders detail tasks, operations, and reports that sergeants and officers must complete each shift. The effect of these highly standardized and routinized procedures is that the amount of discretion and independent judgment exercised by corrections sergeants in assigning and directing day-to-day operations is minimal.

This is not the case, however, for operations sergeants when responding to emergencies. As discussed above, responding to emergencies is a regular aspect of the operations sergeants' job and, when they arise, operations sergeants are responsible for assessing the seriousness of the situation and

determining the best course of action to return the facility to normal operations.

As six operations sergeants wrote in their PAQ:

In [emergent situations] the Corrections Sergeant is the primary entity who decides/initiates an appropriate response, allocates necessary resources, takes direct action, and ensures the facility returns to normal operation post incident.

Moreover, the General Orders provide operations sergeants the authority to respond to emergencies in the manner, and with the personnel, they deem necessary under the circumstances. Specifically, operations sergeants have the authority to radio additional staff for assistance, radio and organize a Corrections Emergency Response Team (CERT), determine who takes part in the CERT team, determine necessary equipment, and command the CERT team in the strategy and force used to control the situation.

The operations sergeants' authority to command emergency scenes is comparable to the fire captains' authority to command fire scenes addressed by the Board in *City of Oskaloosa*, 1995 PERB 5137. In that case, fire captains were the highest-ranking officer on the scene for nearly 90 percent of fire calls and, during the fires, were responsible for assessing the stage of the fire, determining the truck position and necessary equipment, assigning and directing fire fighters, and determining whether additional personnel or equipment was necessary. *See id.* at 7, 19. In holding the fire captains were supervisory employees, the Board explained:

We also view the captain's frequent independent command of the fire scene, and their making of decisions and their issuance of directives based upon their assessment of the circumstances, as supervisory within the meaning of section 20.4(2).

Id. at 18.

Similarly, in this case, operations sergeants are responsible for independently commanding emergency scenes, wherein they determine the necessary personnel for the situation and direct officers based upon their assessment of the circumstances. In these situations, operations sergeants exercise independent judgment in a manner that is not merely routine or clerical. Moreover, although unpredictable, the record demonstrates that responding to emergencies is a regular aspect of the operation sergeants' job and not merely an occasional or remote occurrence.

The supervisory nature of the operations sergeants' authority is consistent with the ALJ's conclusion in the prior *Scott County* case. *See* 2005 ALJ 7140. In that case, the ALJ determined sergeants and lieutenants possessed supervisory authority to assign and direct, in part, because of their authority to respond to unforeseen circumstances, stating:

The lead officer on a shift, Lieutenant or Sergeant, must be prepared to respond with the appropriate manpower to the myriad situations which are unforeseeable but arise with regularity when dealing with incarcerated, male/female/adult/juvenile...This requires a flexibility and adaptability which cannot be embraced in its totality by [standard operating procedures].

Id. at 18.

Finally, the supervisory nature of operations sergeants' authority is strengthened by the secondary consideration that has been recognized by both PERB and the NLRB that if operations sergeants are deemed to be leadpersons, the result would be that correctional officers would work in the absence of a supervisor approximately 50 percent of the time. *See Id.* at 19; *see also Black*

Hawk Cnty., 2005 PERB 6702 at 14n.3. Taken together, I view the operations sergeants' regular, independent command of emergency scenes, and their making of decisions and issuance of directives based upon their assessment of the circumstances, as supervisory within the meaning of section 20.4(2).

Turning to the County's claim that corrections sergeants effectively recommend rewards, the record is clear that corrections sergeants conduct annual performance evaluations for correctional officers and exercise independent judgment in doing so. Although conducting evaluations is not itself a statutory supervisory criterion, the Board has recognized that when employee pay increases are granted automatically based solely on the results of an alleged supervisor's performance evaluations, which are not independently reviewed or given *de novo* consideration by higher-ups, supervisory authority to effectively recommend rewards is present. *See City of West Des Moines*, 1995 PERB 5158 at 16-17; *see also City of Des Moines*, 2009 PERB 7933 at 71-72.

In this case, the record shows that merit pay increases given to correctional officers are based solely on the results of the performance evaluations prepared by the corrections sergeants. If a correctional officer receives a composite score of "3" or above on their evaluation, the officer automatically receives a step pay increase. If an officer receives a score below "3," no merit increase is granted. Thus, as the composite score on an officer's performance evaluation is the sole determinant in whether the officer receives a pay increase, the remaining question is whether the evaluations prepared by corrections sergeants are adopted without independent review or *de novo*

consideration as a matter of course.

Although higher-ranking officers review the evaluations prepared by corrections sergeants, the record demonstrates that captains and lieutenants, recognizing sergeants are in the best position to know the strengths and weaknesses of the correctional officers on their team, give sergeants' ratings significant weight and only review the evaluations to make sure no documented discipline or performance issues were missed. For this reason, captains and lieutenants only rarely recommend changes to sergeants' ratings, as evidenced by Lieutenant Ronnebeck's testimony that over the past three years he has only recommended changing two scores out of the approximately 90 evaluations he has reviewed.

This cursory review of evaluations by higher-ranking officers is similar to the standard the jail employed in 2005. In the prior *Scott County* case, the ALJ found there had been a few instances where command staff changed numerical ratings; however, the ALJ noted these instances were "very rare (less than 5% of the time)." 2005 ALJ 7140 at 7. As such, the ALJ determined, "the frequency of occurrence is sufficiently rare that the evaluations...stay substantially unchanged as the regular and routine rather than the rare exception of substantive change" and concluded the command staff did not independently review or give *de novo* consideration to the evaluations. *Id.* at 18.

The prior ALJ's determination that the higher-ranking officers did not independently review the evaluations has support in PERB's case law. In *City of West Des Moines*, annual performance evaluations prepared by lieutenants were

the sole determinant in whether firefighters received a pay increase, but—like in the case at hand—the fire chief examined the evaluations before signing off. *See* 1995 PERB 5158 at 5. In concluding the fire chief’s brief review of the evaluations did not amount to an independent review or *de novo* consideration, the Board explained:

...the chief is aware that the lieutenants are most familiar with firefighters’ performance and consequently has never changed an evaluation. Instead, it appears that the chief simply examines the content of the evaluation prepared by the fire lieutenant, signs off on the form and passes it on to the personnel office, without conducting any independent review or further investigation of the firefighter’s performance during the evaluation period.

Id.

Thus, a brief or cursory review of a recommendation does not necessarily amount to an “independent review.” Although it is unclear precisely what level of scrutiny transforms a “simple examination” into an “independent review,” the inclusion of “or *de novo* consideration” is informative, as it is a legal term of art and well-defined standard of review. Under a *de novo* standard of review, an appellate court decides an issue “anew” without deference to a lower court’s decision.⁷ This latter standard helps clarify the former.

In the case at hand, the record demonstrates that captains and lieutenants, recognizing sergeants are in the best position to know the strengths and weaknesses of the correctional officers on their teams give sergeants’ ratings significant weight and nearly always defer to their judgment. As such, it is clear the captains and lieutenants do not review the performance evaluations prepared

⁷ *See* https://www.law.cornell.edu/wex/de_novo.

by corrections sergeants *de novo*.

Moreover, while the captains and lieutenants briefly review the evaluations to make sure no documented discipline was missed, they do not further investigate the correctional officers' performance during the evaluation period and otherwise adopt the corrections sergeants' rating as a matter of course. As a result, the evaluations prepared by corrections sergeants "stay substantially unchanged as the regular and routine rather than the rare exception of substantive change." *See Scott Cnty.*, 2005 ALJ 7140 at 18.

Under these circumstances, the higher-ranking officers' cursory, deferential review of the performance evaluations is similar to the "simple examination" performed by the fire chief in *City of West Des Moines*. As such, I conclude the captains and lieutenants do not independently review or give *de novo* consideration to performance evaluations prepared by all corrections sergeants (operations, programs, and training). Accordingly, the record supports the conclusions that corrections sergeants, using their independent judgment in a manner that is not merely routine or clerical, effectively recommend rewards to subordinate employees and are thereby supervisors excluded from coverage of the Act on this basis.

Confidential employee issue

The final prong of the County's argument for exclusion of corrections sergeants from coverage under the Act is based upon the sergeants' purported access to, or possession of, "confidential" information. Iowa Code section 20.3(3) defines "confidential employee" as:

[A]ny public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

“*Confidential employee*” also includes the personal secretary of any of the following: Any elected official or person appointed to fill a vacancy in an elective office, member of any board or commission, the administrative officer, a director, or chief executive officer of a public employer or major division thereof, or the deputy or first assistant of any of the foregoing.

This definition is written in the disjunctive, so that an employee is excluded from the Act’s coverage on “confidential” grounds under any of the following conditions: (1) the employee works in the employer’s personnel office; (2) the employee has access to information subject to use by the public employer in negotiations; (3) the employee works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the employer; or (4) the employee is the personal secretary, deputy or first assistant of certain public officials (including elected officials) or representatives of the employer.

The Public Employment Relations Act is written in broad terms so as to permit a large number of public employees to be eligible for coverage under its provisions. Accordingly, the confidentiality exclusion contained in section 20.4 is to be narrowly construed to promote the Act’s broad application. *See Iowa Ass’n of School Boards v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987). Moreover, it is the employee’s regular functions and responsibilities, rather than his or her temporary or occasional ones, which are determinative of confidential status. *See City of Osceola*, 1987 PERB 3279 at 4; *see also Clayton Cnty.*, 1999 ALJ 6061 at

10; *see also City of Pleasant Hill*, 1982 ALJ 2152.

In this case, the County argues that corrections sergeants should be deemed confidential employees because, historically, the County has included a corrections sergeant on its bargaining team for contract negotiations with the correctional officers' bargaining unit. In its post-hearing brief, the County notes that corrections sergeants provide valuable information to the bargaining team because they directly observe correctional officers and understand issues related to the jail's day-to-day operations.⁸

However, the issue is not whether corrections sergeants' perspective provides value to the bargaining team, but instead whether corrections sergeants' job duties are such that they should be deemed confidential employees under the Act. In this case, the record does not support excluding corrections sergeants as confidential employees under any of the conditions noted above.

To begin, corrections sergeants do not work in the employer's personnel office nor are they personal secretaries, deputies or first assistants to any of the officials listed in section 20.3(3). Thus, corrections sergeants cannot be excluded as confidential employees on either basis.

With respect to "employee access to information subject to use in negotiations," the Board has held that the intent of this standard is not to exclude any employee who might conceivably have access to information subject to use in negotiations. *See City of Osceola*, 1987 PERB 3279 at 4. Rather,

⁸ *See* County brief p. 23.

employees should only be excluded if:

...such employees' access to confidential information would afford an employee organization undue advantage at the bargaining table by providing advance knowledge of either the employer's bargaining strategy or confidential information relating to an employer's bargaining policy.

Linn-Mar Cmty. Sch. Dist., 1987 H.O. 3115 at 6; *see also Clear Creek Cmty. Sch. Dist.*, 1992 ALJ 4762 at 5. Absent in this case is any evidence demonstrating that corrections sergeants, as part of their regular job duties and responsibilities, have access to confidential information concerning the employers bargaining strategy or policy. Although corrections sergeants' knowledge of the Jail's day-to-day operations might prompt the employer to set particular bargaining priorities, this information is not confidential and would not provide an employee organization with any advantage in negotiations.

To the extent the County claims that the corrections sergeants' past participation on the County bargaining team has provided them access to information used in negotiations, participation on the County's bargaining team is not a job duty included in any of the corrections sergeants' job descriptions. Rather, as discussed in the findings of fact, corrections sergeants' regular job duties primarily concern the jail's daily operations and programming. The record does not support the conclusion that corrections sergeants, in the course of their regular job functions and responsibilities, have access to confidential data or information used by the County in negotiations. As such, the record does not demonstrate that any corrections sergeant position should be excluded on the basis of access to information used in negotiations.

Finally, PERB has long held that the phrase “who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer” requires more than mere physical or geographic closeness. *See Linn-Mar Cmty. Sch. Dist.*, 1987 H.O. 3115 at 6; *see also Clear Creek Cmty. Sch. Dist.*, 1992 ALJ 4762 at 5. In this case, the record is absent of any evidence that any corrections sergeant works in a close, continuing working relationship with the Sheriff or a negotiator for the County. As such, the record does not demonstrate that any corrections sergeant position should be excluded on this basis. Accordingly, I conclude the corrections sergeants are not confidential employees within the meaning of sections 20.3(3) and 20.4(3) of the Act.

However, as discussed above, the entirety of the record in this case supports the conclusion that the responsibility and authority of the Scott County Jail corrections sergeants substantially identifies them with management and warrants their classification as supervisory employees excluded from the Act’s coverage by section 20.4(2). Consequently, I propose the following:

ORDER

The combined unit determination/representative certification petition filed by Scott County Corrections Sergeants Association is hereby DISMISSED.

This proposed decision will become PERB’s final decision on the Association’s combined petition in accordance with PERB rule 621—9.1(2) unless, within 20 days of the date below, a party aggrieved by the proposed decision files an appeal to the Board or the Board on its own motion determines

to review the proposed decision.

DATED at Des Moines, Iowa this 7th day of March, 2022.

A handwritten signature in black ink, appearing to read "Patrick B. Thomas", is written over a solid horizontal line.

Patrick B. Thomas
Administrative Law Judge

Filed electronically.
Parties served via eFlex.