

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF:	)	
	)	
WAPELLO COUNTY,	)	
Public Employer/Petitioner,	)	
	)	
and	)	CASE NO. 102494
	)	
TEAMSTERS LOCAL 238,	)	
Certified Employee Organization.	)	

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**DECISION AND ORDER**

The Public Employer, Wapello County, filed a petition on October 29, 2020, for a public safety unit determination by the Public Employment Relations Board (PERB or Board). Teamsters Local 238 is the employee organization certified to represent the unit of Wapello County Sheriff's Department employees. Pursuant to PERB rule 621—6.4, a determination is required because the parties failed to agree on the unit's public safety status prior to negotiations of their successive collective bargaining agreement. Pursuant to the definition set out in PERB subrule 1.6(13), a bargaining unit comprised of thirty percent or more public safety employee constitutes a public safety unit.

The unit's public safety status rests on the unit inclusion or exclusion of a non-public safety employee who works in the kitchen. The County asserts this kitchen position is included and therefore, the unit composition is that of a non-public safety unit. The Teamsters argue the position is excluded from the unit. The Teamsters maintain this is a public safety unit as a result.

Pursuant to notice, an evidentiary hearing on the petition was held before the Board on December 21, 2020. The County was represented by attorney Hugh Cain and the Teamsters were represented by attorney Jill Hartley. Both parties filed post-hearing briefs, the last of which was filed on January 21, 2021.

We conclude the bargaining unit is a public safety unit based on the following:

**I. FINDINGS OF FACT.**

**A. Background.**

Prior to hearing, we took official notice of the unit history reflected in PERB Case Nos. 900 and 6977; and the BU-0598 case file of the 2020 retention and recertification election of the Teamsters. In the BU-0598 election, the parties mutually agreed to a list of eligible unit voters with the understanding it bears no weight on the outcome of this case. There is also a pending amendment of unit petition, PERB Case No. 102504, filed by the County.

The County is a public employer within the meaning of Iowa Code section 20.3(10) (County or Sheriff's Department) and the Teamsters is a certified employee organization within the meaning of section 20.3(4). In PERB Case No. 900, the Over the Road and City Transit Drivers, Local Union No. 147 (Teamsters) was originally certified on April 4, 1977, as the exclusive representative of the following bargaining unit of Wapello County Sheriff's Department employees:

INCLUDED: All employees of the Sheriff's Department.

EXCLUDED: Sheriff, Chief Deputy, Confidential Secretary, Food Coordinator and all those excluded by Section 4 of the Act.

The unit has not been amended since its original determination.

**B. Food Coordinator and Kitchen Employees.**

At the time of the unit determination, Sheriff Bud Erwin ran the Wapello County Sheriff's Department. His wife, Luanne, was the Food Coordinator, a salaried position appointed by the County's board of supervisors and excluded from the bargaining unit. Luanne ordered food, maintained the kitchen, inventoried supplies, and prepared all the meals for the jail. No other employees worked for Luanne or assisted in the kitchen and with meal preparations.

Sheriff Erwin and Luanne retired in 1996. The Sheriff's Department did not hire kitchen employees until a new jail was built and opened on November 9, 2000. During this interim period, other jail staff, including matrons, jailors, and even the sheriff, pitched in to prepare and serve the food.

Before the new jail was finished, Sheriff Kirkendall hired Theresa Richmond to prepare the jail's new kitchen. Richmond began employment with the Sheriff's Department on May 24, 2000, as a correctional officer. When Richmond transferred to the kitchen on September 5, 2000, "Food Service" was listed on her change of employment form. The sheriff gave Richmond a budget to follow in completing food orders to stock the new kitchen and purchasing new cooking and serving equipment and utensils.

Once the jail was completed and until her retirement, Richmond was responsible for preparing menus; obtaining menu certification from the dietician; updating recipes; ordering food from vendors; maintaining budgeted food and equipment costs; preparing cleaning and food preparation lists; purchasing

equipment; and coordinating the annual inspection of the kitchen. She spent about forty to fifty percent of her time on these administrative tasks and was provided a locked office off the kitchen where she performed these duties. She spent the remainder of her time on preparing and serving lunch and supper meals.

Throughout this time, the Sheriff's Department always employed two other kitchen employees who assisted Richmond. These two employees arrived later in the morning. They prepared and served lunch and supper meals; and helped with cleaning tasks. The most senior of the two covered Richmond's tasks while she was on vacation or sick. The jail administrator supervised all kitchen employees, including Richmond.

**C. 1997-2003.**

At the time of the new jail's construction, the Sheriff's Department and the Teamsters were parties to a collective bargaining agreement effective July 1, 1997, to June 30, 2000.<sup>1</sup> The agreement's recognition clause provided, in part:

The bargaining unit, for the purposes of the Agreement, shall consist of all employees of the Sheriff's Office of Wapello County, Iowa, but excluding the Sheriff, Chief Deputy, confidential secretaries and all others excluded by the Act.

The recognition clause did not change in successive collective bargaining agreements. In this agreement, kitchen employees were not included in the listing of job classifications and their corresponding base rates in Appendix I, "Wages."

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<sup>1</sup> This is the earliest collective bargaining agreement of record.

The parties' successive agreement was effective July 1, 2000, to June 30, 2003. A job classification for kitchen employees was not included in the wage provisions, Appendix I, for July 1, 2000, and July 1, 2001. For July 1, 2002, "kitchen" was a handwritten addition to the list of job classifications with a designated base rate of 9.96. Around this period, from July 2002, and for the next two years, Richmond paid union dues to the Teamsters.

Annually, the Sheriff's Department produced a list of its employees, including the sheriff, deputies, correctional officers, and all others by position, name, and wage rate. For 2001 and 2002, Richmond was listed by name and her position was identified as "Food Service Co-ord" with respective rates of pay listed as \$9.58 and \$9.96. The other two kitchen employees were each listed as a "Food Service Worker." One employee received hourly rates of \$9.58 and \$9.96 respectively for the two years while the other received hourly rates of \$9.44 and \$9.67 respectively.

**D. 2003-2009.**

In the agreement effective July 1, 2003, to June 30, 2006, "Current Kitchen Staff" and "New Kitchen Staff" were included in the list of job classifications with corresponding wage rates in Appendix I. The two classifications were similarly listed in the subsequent three-year agreement. In the agreement effective July 1, 2003, longevity pay was increased for all employees from \$.05 to \$.10 per hour for each five consecutive years of service.

Effective February 15, 2005, the sheriff implemented a standard operating procedure (SOP), "Title: Job Description—Non Contractual Kitchen Staff."

Duties included: preparation, service, and clean up for breakfast, lunch, and supper; miscellaneous kitchen cleaning; and “Inventory supplies and Order Food supplies.” The SOP provided space for the employee and supervisor’s signatures. Revisions were made January 3, 2017, and January 1, 2020.

For the first six years, Richmond worked Tuesday through Saturdays. In 2006, the assistant jail administrator gave Richmond weekends off for the extra work she did. The Sheriff’s Department management never negotiated Richmond’s schedule change with the Teamsters. It was during this period Richmond believed she was given the actual title of Food Service Coordinator by the sheriff.

**E. 2009-2021.**

In the parties’ agreement effective July 1, 2009, to June 30, 2012, the parties retained the “Current Kitchen Staff” job classification listing with a corresponding wage scale, but they added a separate wage scale for “Kitchen Staff” with ascending wage rates for “Start,” “1 Year,” “2 Years,” and “3 Years.” Successive agreements reflect the same provisions. For July 1, 2017, the kitchen hourly wage rates were: Current Kitchen Staff \$14.80; Start \$11.84; 1 Year \$12.83; 2 Years \$13.80; and 3 Years \$14.80. In 2017, the parties executed an extension of their expiring agreement. They agreed to a zero percent wage increase on July 1, 2018, and one percent wage increases on July 1, 2019, and July 1, 2020. The extension expires June 30, 2021.

The collective bargaining agreements provided for dues deductions for employees to have union dues deducted from their paychecks and paid to the

Teamsters. The agreements' hours of work provisions provided that the employer would establish and post hours of work for occupational groups and shifts. With exception for some job classifications, the agreements provided for eight-hour workdays with a one-hour lunch and two fifteen-minute breaks.

In May 2020, Richmond retired and was earning an hourly rate of \$15.15.<sup>2</sup> Several months prior, Richmond began training Tammy Rhoads to be her replacement as the Food Service Coordinator.<sup>3</sup> The Sheriff's Department originally hired Rhoads for the position of "kitchen" on January 22, 2018, at an hourly rate of \$11.84. After Rhoads took over for Richmond, Jail Administrator Chris Swope and Sheriff Don Phillips raised her hourly pay to \$15.10, which was higher than what she would have received pursuant to the collective bargaining agreement. Management did not want Rhoads to make less than another kitchen employee. Sheriff Phillips admits they did not negotiate Rhoads' wage increase with the Teamsters.<sup>4</sup>

When the parties began negotiations for a successive collective bargaining agreement effective July 1, 2021, they were unable to agree on the public safety

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2 In her testimony, Richmond knew her hourly rate at retirement, but she appeared genuinely unaware of contractual rights such as longevity pay and hours of work.

3 The County's assertions that the position was the same as other kitchen employees and did not have the title of "Food Service Coordinator" are not supported by the weight of evidence. The record reflects the Food Service Coordinator differed substantively from other kitchen positions; County documents identified Richmond with the title of Food Service Coordinator; and Richmond believed she was given the title from the sheriff.

4 These actions by management rebut the sheriff's testimony that he believed the Food Service Coordinator was a unit position. The county supervisor's testimony that he believed the position "should" be in the unit is irrelevant. According to the County officials, the Food Service Coordinator does not possess the authority to hire, fire, discipline, suspend, layoff, recall, promote or reward employees; or the authority to adjust grievances or direct staff. The officials did not provide underlying examples or specifics for what may be viewed in part as legal conclusions pertaining to "supervisory employee" functions within the meaning of Iowa Code section 20.4(2).

status of the sheriff's department bargaining unit. It is undisputed that Richmond and then Rhoads' position of Food Service Coordinator is a non-public safety position. It is further undisputed that if the Food Service Coordinator is excluded, the unit consists of thirty percent public safety employees and constitutes a public safety unit. Conversely, the unit inclusion of the Food Service Coordinator results in the bargaining unit having the composition of a non-public safety unit. The parties mutually agreed to waive the March 31, 2021, deadline for the completion of their negotiations of a new collective bargaining agreement.

## **II. CONCLUSIONS OF LAW.**

### **A. Significance of Public Safety Status.**

Collective bargaining rights were significantly impacted in 2017 by House File 291 amendments to Iowa Code chapter 20. *See* 2017 Iowa Acts, House File 291. The amendments established collective bargaining rights based on unit composition of "public safety employees." Units comprised of thirty percent or more public safety employees retained many of the pre-House File 291 bargaining rights, including a majority of Iowa Code section 20.9 mandatory subjects of bargaining. *See* Iowa Code § 20.9 (2019). PERB refers to these bargaining units as "public safety units." *See* Iowa Admin. Code r. 621—1.6(13). For other units, deemed "non-public safety units," there is now only one mandatory subject of bargaining, "base wages." *See* Iowa Code § 20.9 (2019). Thus, a unit's public safety status is of significance to public employers, certified employee organizations, and unit employees.



**B. Relevant Administrative Rules.**

For bargaining units which include at least one public safety employee, parties who engage in negotiations shall endeavor to agree and stipulate to the public safety status of the unit. See Iowa Admin. Code r. 621—6.4(4). In the event parties are unable to agree, the party asserting public safety status shall file a petition for determination of the unit status. See *id.* r. 621—6.4(6)(a). The public safety status calculation and filing of stipulations and petitions are tied to the expiration of the parties’ collective bargaining agreements and set by PERB administrative subrules:

**6.4(3)** *Determination of public safety unit status.* A bargaining unit will constitute a public safety unit if at least 30 percent of the employees in the unit were public safety employees at any one time in the six months preceding the applicable date identified in subrule 6.4(7).

**6.4(7)** *Deadlines.* The stipulation shall be submitted or a petition filed on or before the dates indicated:

- a. August 1 for contracts that expire January 1 to March 31 of the subsequent year.
- b. November 1 for contracts that expire April 1 to June 30 of the subsequent year.
- c. February 1 for contracts that expire July 1 to September 30 of the same year.
- d. May 1 for contracts that expire October 1 to December 31 of the same year.

*Id.* rs. 6.4(3) and 6.4(7).

**C. Analysis.**

In the case at hand, it is undisputed that the public safety status of the bargaining unit rests on the unit inclusion or exclusion of the Food Service Coordinator position held by Richmond then Rhoads. The parties do not dispute that the exclusion of this position results in a unit composition that constitutes

a public safety unit. Given the collective bargaining agreement's June 30, 2021, expiration, the unit's public safety status is determined based on Richmond or Rhoads' exclusion from the unit "at any one time" during the period May 1, 2020, to October 31, 2020. *See id.* rs. 6.21—6.4(3) and 6.4(7). Richmond worked in the position at issue until her retirement on May 22, 2020. Rhoads took over the position thereafter.

The County argues the Food Service Coordinator position, held by Richmond and later by Rhoads, is included in the unit for the purpose of calculating the unit's public safety status. The County asserts the position varies significantly from the "Food Coordinator" position, which is specifically an excluded position in the unit description. The County maintains the Food Coordinator position no longer exists and the Food Service Coordinator is not supervisory; is no different than the other kitchen staff; and has been treated as part of the bargaining unit.

The Teamsters posit the Food Service Coordinator position is excluded from the unit thereby making this a public safety bargaining unit. The Teamsters allege the Food Service Coordinator is the same Food Coordinator position held by former employee Luanne Erwin and specifically listed as an excluded job classification in the unit description.

*Unit clarification standard.*

The case presents the first impression issue of whether a particular position is included or excluded from a bargaining unit for the purpose of determining the unit's public safety status. Although this public safety

determination is based on a set period, May1, 2020, to October 31, 2020, the determination is akin to PERB unit clarification determinations. The unit clarification proceeding discerns the inclusion or exclusion of job classifications or employees in the unit as presently constituted. *Hawkeye Comm. Coll. & United Elec., Radio and Mach. Workers of Am.*, 2002 PERB 6310, 6312, & 6321 at 9. Accordingly, the same analysis is appropriate in determining the unit placement of the Food Service Coordinator.

In a unit clarification proceeding, the first step is to determine whether the position at issue is “encompassed by the wording of the present bargaining unit description.” *E. Iowa Cmty. Coll. Higher Educ. Ass’n & E. Iowa Cmty. Coll. Dist.*, 1982 PERB 2110 at 3. If the unit description unambiguously includes or excludes the position at issue, the inquiry ends. *Id.* at 3-4. If the description is ambiguous, examination of other probative factors is required. *Id.* at 4. PERB has set forth the following guidance with respect to probative factors:

. . . attention is turned to other factors which might be probative of whether the position falls within the determined unit, including such matters as whether it has traditionally been treated as such, whether similar positions or persons who perform similar duties are included in the unit, and like factors. But again, the focus is on those matters probative of whether the position is and has been in the bargaining unit, not whether it should be or should have been placed in the bargaining unit.

*Woodbury Cnty. & Comm. Workers of Am., Local 7177; Woodbury Cnty. & AFSCME Iowa Council 61*, 2015 PERB 8792, 8794 & 8795 at 13.

Examination of unit description and probative factors.

In the present case, the Food Service Coordinator is not a position encompassed by the wording of the unit description. Clearly, the unit description expressly excludes the Food Coordinator. Without further examination, it is ambiguous whether the excluded “Food Coordinator” is a position equivalent to the Food Service Coordinator. Thus, the unit description does not unambiguously include or exclude the position at issue and requires our examination of other probative factors.

Other probative factors indicate the Food Service Coordinator has been and is excluded from the bargaining unit. With one such factor, the record demonstrates the parties have traditionally treated the Food Service Coordinator as a position excluded from the unit. The parties’ recognition clause is of limited relevance to the issue of the parties’ historical treatment of the position. These recognition clauses have no legal significance or bearing on unit composition determined by PERB. See *City of Cedar Falls*, 1981 PERB 1911 at 2. Additionally, without additional evidence, we do not know if the prior recognition clauses specifically excluded “Food Coordinator” when Luanne Erwin was employed.

In examining Richmond’s actions over her entire span of employment, there is no determinative evidence that Richmond considered herself a part of the bargaining unit. Richmond’s payment of union dues for two years, 2002 to 2004, suggest she considered her position a part of the unit. However, she appeared unaware of any contractual rights she may have had and interacted

solely with management. When her schedule was changed in 2005, management did not review the parties' collective bargaining agreement and hours of work provisions and did not consult the Teamsters.

The most persuasive evidence regarding the parties' treatment of the position is the department's wage payment to the Food Service Coordinator. In the beginning, Richmond received an hourly wage consistent with the collective bargaining agreement. When she retired in May 2020, she was paid \$15.15, an amount which does not square with terms of the parties' agreement. The extension agreement provided an hourly rate of \$14.80 effective July 1, 2017, with a one percent increase July 1, 2019. In addition, Richmond would have also received longevity pay of \$.10 hourly in 2005, another in 2010, and yet a third in 2015. According to the parties' agreements, Richmond would have earned an hourly sum greater than \$15.15, which she was earning at retirement.

With Rhoads, the sheriff admitted that he did not negotiate with the Teamsters before it paid Rhoads, \$15.10 hourly, an amount greater than what she would have earned under the collective bargaining agreement. The record demonstrates the Sheriff's Department treated the Food Service Coordinator differently than other kitchen employees who were paid according to the collective bargaining agreement. In our examination of this factor, on balance, the parties treated the Food Service Coordinator as a position excluded from the bargaining unit.

A second probative factor we examine is whether similar positions or persons who perform similar duties are included in the unit. Here, the

Teamsters maintain the Food Service Coordinator is the same position as the Food Coordinator position specifically excluded in the unit description. On the other hand, the County asserts the excluded Food Coordinator position was eliminated and is dissimilar to the position held by Richmond and now by Rhoads.

Relevant to this factor is the unit history of record with PERB. The parties did not file a petition to amend the unit with PERB at any time after Erwin retired from the Food Coordinator position. Based on this history, the parties treated the Food Coordinator position as one still in existence and excluded from the unit. The issue is whether the Food Service Coordinator is substantively the same or similar to the Food Coordinator position that is clearly excluded from the unit.

We disagree with the City's assertion that Luanne Erwin's salary and board appointment distinguish her position as Food Coordinator from the Food Service Coordinator position. Substantively, these positions are the same. Both Luanne Erwin and Richmond had the same primary responsibility for oversight, administration, and operation of the jail's kitchen and required meal preparations. Luanne Erwin did not work with other kitchen employees like Richmond, but their job duties were the same nonetheless. Unlike other kitchen staff, Richmond performed administrative tasks for forty to fifty percent of her time presumably akin to what was required of Erwin managing the kitchen solo. Richmond kept inventories of food and equipment, tracked budget guidelines,

prepared recipes and menus, ordered food from vendors, obtained menu certifications, and completed food preparation and cleaning lists.

The Food Service Coordinator is essentially the equivalent position formerly held by Luanne Erwin in the title of Food Coordinator. The parties do not dispute the unit exclusion of the Food Coordinator position. When we look to the unit placement of this similar, if not equivalent, position as a factor, this supports the unit exclusion of the Food Service Coordinator.

As a final matter in unit clarification proceedings, we may examine other “like” factors that may be probative of whether the position falls within the unit. *See Woodbury Cnty.*, 2015 PERB 8792, 8794 & 8795 at 13. Evidence relating to the position’s supervisory function is not probative of whether the position falls within the unit. In our determination, the focus is on whether the position is and has been in the bargaining unit, not whether it should be or should have been placed in the bargaining unit. *Id.* We think evidence relating to the presence or absence of supervisory functions of the Food Service Coordinator is relevant to an amendment of unit proceeding that facilitates *prospective* adjustments in the composition of the bargaining unit. *See Woodbury Cnty.*, 2015 PERB 8792, 8794 & 8795 at 12 (emphasis added). For this reason, we do not consider it as a probative factor in our analysis.

### **III. CONCLUSION.**

Based on our examination of the entire record and consideration of the parties’ arguments, we determine the Food Service Coordinator has traditionally been treated as excluded from the unit and its similarity to the Food Coordinator

is indicative of its unit exclusion. In totality, these probative factors lead us to conclude the Food Service Coordinator was and is a position excluded from the Sheriff's Department unit. This includes the period when Richmond was in the position and the time in which Rhoads has served as well.

Turning to the unit's public safety status, our determination is based on whether either Richmond or Rhoads was excluded from the unit "at any one time" during the period May 1, 2020, to October 31, 2020. See Iowa Admin. Code r. 621—6.4(7). Because we determined the Food Service Coordinator was and is an excluded unit position, Richmond and later Rhoads are excluded from the unit for the purposes of calculating the unit's status. Consequently, their unit exclusion results in public safety status for the Sheriff's Department bargaining unit.

Accordingly, we enter the following:

### **ORDER**

The Wapello County Sheriff's Department bargaining unit is a public safety unit with the meaning of PERB rule 621—6.4. The parties shall negotiate their collective bargaining agreement, effective July 1, 2021, consistent with our determination.

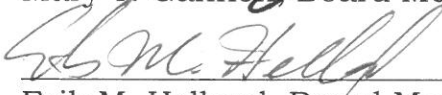
This decision constitutes final agency action.



DATED at Des Moines, Iowa, this 17th day of March, 2021.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

  
\_\_\_\_\_  
Mary T. Gannon, Board Member

  
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Erik M. Helland, Board Member

Original filed EDMS.