

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
CITY OF ONAWA,)	
Public Employer,)	
and)	CASE NO. 102507
AFSCME COUNCIL 61,)	
Certified Employee)	
Organization/Petitioner.)	

PROPOSED DECISION AND ORDER

On November 5, 2020, AFSCME Council 61 filed a petition for amendment of bargaining unit pursuant to Iowa Code section 20.13 and PERB rule 621—4.6 (20). AFSCME seeks to add two newly created positions—electric superintendent and assistant electric superintendent—to an existing bargaining unit of City of Onawa employees. The City resists the petition, asserting the new positions are supervisory employees within the meaning of Iowa Code subsection 20.4(2) and thus excluded from coverage of Iowa Code chapter 20.

Pursuant to notice, an evidentiary hearing on the petition was held before me on February 2, 2021. AFSCME was represented by Julie Dake Abel. The City was represented by Jack Reed. The City delivered closing arguments at the conclusion of the hearing. AFSCME filed a post-hearing brief on March 2, 2021.

Based upon the entirety of the record, and having considered the parties' arguments, I conclude the electric superintendent and assistant electric superintendent are not supervisory employees excluded from coverage of Chapter 20 and thus can be added to the existing unit.

1. Findings of Fact

1.1 Original Unit Determination

The City of Onawa is a public employer within the meaning of Iowa Code subsection 20.3(10) and AFSCME Council 61 is an employee organization within the meaning of subsection 20.3(4). AFSCME was certified in 2013 (PERB Case No. 8505) as the exclusive bargaining representative for the following unit of the City's employees:

INCLUDED: maintenance operations coordinator, cemetery sexton/street foreman, electric foreman, water/sewer foreman, wastewater treatment plant worker, street/cemetery crew worker, electric crew worker, water/sewer crew worker, shop/maintenance worker, administrative assistant, deputy clerk, and community center staff.

EXCLUDED: city administrator, police chief, assistant police chief, city clerk, community center director, police officers, and seasonal workers.

The City and AFSCME have negotiated successive collective bargaining agreements (CBAs) for this unit of employees. The current CBA is effective July 1, 2017, through June 30, 2022. The recognition clause in the current CBA is identical to the included category as determined in 2013.

Testimony received at hearing revealed that all but three of the included job classifications no longer exist. However, neither the City nor AFSCME have petitioned PERB to amend the original unit composition other than AFSCME's instant petition seeking to add the electric superintendent and assistant electric superintendent to the existing unit. As such, absent a proper petition for additional changes to the unit, this decision will only address whether the newly-

created positions of electric superintendent and assistant electric superintendent are eligible for inclusion in the existing unit.

1.2 City's Organizational Structure

The City of Onawa has a mayor-council government system. The current organizational chart shows the City's various departments are split into three separate divisions. One division is the police chief and police staff. The second division consists of boards and commissions, fire, city attorney, and library staff. The third division includes the rest of the City's employees and consists of seven separate departments—city clerk, electric, economic development and zoning, parks, facilities, cemetery, and public works. The parties generally refer to this grouping of employees as the public works unit. The public works unit is overseen by Public Works Administrator John Casady. Casady reports directly to the Mayor and City Council.

The City's current organizational structure was adopted in late 2020 following a restructuring of its public works department. A 2017 organizational chart shows the public works department consisted of the following personnel: electric, street and cemetery, water and wastewater, and facilities. The department head was the Director of Public Works/Utilities Superintendent. Casady was in that position at the time. Directly under Casady, the City had an Assistant Public Works Director/ Utilities and Street Foreman position. Three of the public works units – electric, water, and wastewater—had a foreman position overseeing their respective operations.

The public works restructuring plan was implemented over a span of about two years. The restructuring was prompted by several changes. First, the City previously had a city administrator that oversaw all the departments now overseen by Casady. The City did not fill the administrator vacancy, but instead gave Casady additional administrative responsibilities. This resulted in the creation of the Public Works Administrator position that oversees all seven of the departments previously outlined. Second, the City contracted out its water and wastewater operations, leaving only the electric, street and cemetery, and facilities operations to be run by the City. Finally, the facility that housed public works became too small to house all the vehicles and equipment. The City thus purchased a new building and moved its electric personnel and operations into the new building separate from the rest of the public works operations. However, the City of Onawa is small and the departments routinely assist each other as needed. The documentary evidence in the record reveals the City had 33 employees, including 4 seasonal employees, in 2020.

1.3 City's Electric Department

After the electric department was relocated to the new building, the City created the electric superintendent and assistant electric superintendent positions. The City asserts the positions were created because the electric department is now entirely separate from the rest of public works and must have an on-site supervisor at the new location. The City describes the electric superintendent position as an "office supervisor" and the assistant electric supervisor as a "field supervisor" for the electric department.

The electric department now consists of three employees: electric superintendent (ES), Kyle Cuka, assistant electric superintendent (AES), Jake Fox, and an apprentice lineman, Jake Huff. The three employees, together with the public works foreman, are on a rotating on-call schedule for electrical emergencies and outages.

The ES and AES positions were created in October 2020. It does not appear the City eliminated any employees as part of the restructuring. Instead, the change was limited to the creation of the new ES and AES positions, and concurrent elimination of the foreman and lead journeyman positions previously occupied by Cuka and Fox. Both Cuka and Fox were retained and placed in the new positions.

1.4 Electric Superintendent Job Duties

The job description for the electric superintendent is part of the record. The description states the ES position is in the Public Works Department, and reports to the Public Works Administrator. The primary purpose of the ES position is “supervising and overseeing the operations for the city electric department including directing personnel and job assignments. Administering electric department functions to address emergencies and routine maintenance.”

It further lists numerous essential duties and responsibilities, such as:

- Reports to the Public Works Administrator periodically or as required
- Supervise and direct all aspects of the electric department including personnel
- Oversees the construction for all department projects to insure their adequacy and timely completion

- Plans, supervises, evaluates, and schedules personnel to ensure satisfactory operation and performance
- Reviews the work for subordinates to maintain efficiency and good morale
- Monitors spending to keep within approved budget
- Ability to supervise, direct and teach subordinates the procedures for the electric department's maintenance and repair, and other necessary functions or tasks

The list of duties and responsibilities is non-exhaustive, specifically indicating that other duties may be required and assigned by the Public Works Administrator. Kyle Cuka has been the ES since the position was created.

Prior to the creation of the ES position, Kyle Cuka was the electric foreman. Cuka has been employed by the City since February 2016, but it is unknown whether he occupied the electric foreman position since that time. Cuka did not testify at the hearing. It is unknown what specific changes in duties, if any, he experienced when he moved from the electric foreman to the ES position.

The record also does not contain a copy of the electric foremen job description prior to its elimination. However, the record does contain the 2012 PERB decision that determined the original bargaining unit, PERB Case No. 8505, and placed the electric foreman position in the bargaining unit. The hearing officer noted, based on the electric foreman job description that was presented to her at the time, the electric foreman had the following duties and responsibilities:

- Supervises, performs, and assists in planning skilled work in the construction, maintenance, repair of electrical transmission and distribution lines and related equipment.
- Crew foreman in charge of scheduling daily workload and delegating job assignments to full and part-time members of his crew.

- Responsible in seeing that all service calls are handled in a timely manner.
- Responsible in making sure that at least one member of the electrical crew will be available at any hour of any day.
- Operate heavy and light equipment necessary in the performance of maintenance, repair, and construction related to the job (CDL required), assists all other City departments, or delegate crew members to assist, when necessary, by performing skilled or manual labor and operating heavy and light equipment.
- Ensures that his crew members comply with all personnel, safety, and other City policies.

City of Onawa and AFSCME Council 61, 2012 ALJ 8505 at 10. Since the original unit creation, the electric foreman position has been in the bargaining unit. Notably, as indicated in the hearing officer’s decision, the City referred to any foremen position as a “superintendent” during the original unit determination proceeding.

1.5 Assistant Electric Superintendent Job Duties

The assistant electric superintendent job description is part of the record. Like with the ES position, the description states the AES is part of the Public Works Department and reports to the ES and the Public Works Administrator. The primary purpose of the AES position is “supervising and overseeing the apprentice electric line worker for the city’s electric department including directing personnel and job assignments. Administering electric department functions to address emergencies and routine maintenance.” The job description lists numerous essential duties and responsibilities, such as:

- Serves as electric superintendent in his/her absence
- Supervise and direct apprentice electric personnel
- Plans, supervises, evaluates, and schedules personnel to ensure satisfactory operation and performance

- Reviews the work of subordinates to maintain efficiency and good morale
- Monitors spending to keep within approved budget
- Ability to supervise, direct and teach subordinates the procedures for the electric department's maintenance and repair, and other necessary functions or tasks

The list of duties and responsibilities is non-exhaustive, indicating that other duties may be required and assigned by the ES or Public Works Administrator.

Jake Fox has been the AES since the position was created.

Prior to the creation of the AES position, Jake Fox was the electric lead journeyman. The City eliminated this position as part of the public works restructuring and placed Fox in the AES position.

The lead journeyman job description is part of the record. This position was created in March 2020. The primary purpose of the position was "to perform work in construction, maintenance, and repair of overhead and underground electric distribution systems." The lead journeyman position also supervised and directed electric apprentices and electricians in the field as noted by the job description. The essential duties and responsibilities included:

- Performs all aspects of electric distribution construction and maintenance work
- Supervises and oversees employees for maintaining safe operations
- Investigates customer electric service complaints, oversees the field operation of construction equipment and tools, and posts late notices/disconnection notices to customers
- Maintains time and work records

The lead journeyman position was considered part of the bargaining unit. Fox testified at the hearing that the only change in his duties and responsibilities since becoming the AES in October 2020 is that now he can sign off on

apprentice Huff's hours worked for the apprenticeship program and he can approve Huff's time off requests.

1.6 Purported Supervisory Functions of ES and AES

The City contends both the ES and AES are supervisory employees within the new separate electric department. Specifically, the City claims the ES and AES have independent authority to do the following supervisory functions: assign, direct, transfer, promote, discipline, suspend, discharge, and adjust grievances of other public employees.

Casady testified that the number of employees the ES and AES supervise fluctuate daily. The departments routinely work together because Onawa is a small city. For example, in the event of a snow storm, the entire public works department, electric department, and police department could be doing one job. In the event of an electrical problem, there is a potential that all of the employees would be assisting the electric department. ES Cuka and AES Fox are the only two City employees qualified to oversee electrical work because they are licensed journeyman. As a result, any electric work involving energized lines must be supervised and inspected by them.

The City presented a log of activities the ES and AES performed from late November 2020 to mid-January 2021 as evidence of the positions' supervisory status. It is unknown who created the log sheet. However, AES Fox testified that ES Cuka gave him the log sheet and asked him to keep track of his "supervisory role" on a daily basis. The log sheet contains the following columns: approve time sheets, approve apprenticeship hours, approve time off, dispatch, assist others,

inspect work, and supervise others. Both ES Cuka and AES Fox completed the daily log. For the 30 days on ES Cuka's log sheet, from November 24, 2020, to January 14, 2021, he indicated performing the specific tasks as follows:

- Approve time sheets – 3 times
- Approve apprenticeship hours – 3 times
- Approve time off – 9 times
- Dispatch – 26 times
- Assist others – zero times
- Inspect work – 14 times
- Supervise others – 13 times

For the 28 days on AES Fox's log sheet, from November 30, 2020, to January 15, 2021, AES Fox indicated performing the specific tasks as follows:

- Approve time sheets – zero times
- Approve apprenticeship hours – 2 times
- Approve time off – 2 times
- Dispatch – 27 times
- Assist others – 6 times
- Inspect work – 28 times
- Supervise others – 28 times

The record contains some explanation as to what work each of the log columns encompass.

The ES keeps track of employee payroll for the electric department. The “approving time sheets” column demonstrates the ES signed off on payroll timesheets. Employees are paid bi-weekly, so the ES has done this duty three times in the roughly 6 weeks tracked. Only the ES has been shown to complete this task, but the City asserts the AES has authority to approve timesheets in ES Cuka's absence. It is unknown on this record who approved payroll timesheets for the electric department prior to the creation of the ES position.

The City employs one apprentice lineman, Jake Huff. For certification purposes, the apprentice is required to track his hours worked on a sheet provided by the Iowa Association of Municipal Utilities (IAMU). Any electric work the apprentice completes must be inspected and supervised by a licensed journeyman. As such, either ES Cuka or AES Fox, as the only qualified journeyman employed by the City, are always working alongside the apprentice. The apprentice fills out the IAMU sheet, the ES or AES compares the sheet to the hours worked, and signs off on the sheet, confirming to the IAMU that the apprentice actually worked those hours. The record does not contain evidence as to who previously signed off on the apprenticeship hours prior to the creation of the ES and AES positions.

The ES and AES have independent authority to grant or deny time off requests. The log sheet demonstrates that both ES and AES have exercised this duty. The AES can approve time off requests for apprentice Huff, while the ES can approve time off requests for both AES Fox and apprentice Huff. The record contains no direct evidence as to how or on what basis time off requests are reviewed or granted. The record also contains no information as to who used to handle time off requests prior to the creation of the ES and AES positions.

The daily operations of the electric department involve completing various work orders and responding to tasks that come up for electric work around the City. The final four items on the log sheet – dispatch, assist others, inspect work and supervise others – are all presented by the City as evidence that the ES and AES assign duties and direct other public employees on a daily basis.

The ES or AES determine who will handle work orders and dispatch employees accordingly. The ES and AES also handle work orders themselves. AES Fox testified that he may dispatch apprentice Huff to read an electric meter while he handles another request. Alternatively, if the request requires a licensed journeyman, the AES will have apprentice Huff accompany him to handle the request. The City contends the dispatch column demonstrates the ES and AES assign work on a daily basis because they determine where employees will be sent. AES Fox testified that he occasionally dispatches an employee from one job to another. AES Fox also testified that dispatching is not a new duty since becoming the AES. He used to dispatch in his prior position of lead journeyman, a position included in the bargaining unit.

The City also contends the dispatch column shows the ES and AES have the authority to “transfer” employees from one job or project to another on a daily basis. AES Fox testified that he has occasionally dispatched employees to different jobs. The record does not establish how dispatch decisions are made. Additionally, no evidence suggests this is a new duty for Cuka or Fox since the creation of the ES and AES positions.

The “assist others” column on the log sheet describes the time the ES or AES assisted other employees or departments. The record establishes all City employees often assist each other with tasks as the need arises. For example, AES Fox testified that the electric department employees will assist the street department with plowing snow and filling potholes, or assist the cemetery employees with digging graves when they are short-staffed. Other departments

assist the electric department when needed as well. Assisting other departments and employees occurred prior to the creation of the ES and AES positions.

The “inspect” column on the log sheets describes times when the ES or AES inspected the electric work performed. National, state and city agencies dictate the safety regulations that govern electrical work. Cuka and Fox are the only licensed journeyman employed by the City and thus the only qualified personnel to inspect electrical work. AES Fox testified that he inspects apprentice Huff’s work on a daily basis because Huff is still learning and not yet licensed. For example, if Huff is working on wire connections, AES Fox will check the work is done correctly before energizing the service. Fox testified that inspecting work could be done by a lead worker. ES Cuka and AES Fox, as the only two licensed journeymen, inspected the work of others even prior to the creation of the ES and AES positions.

The “supervise” column reflects times when the AES oversaw the work performed by apprentice Huff or other employees assisting the electric department. ES Cuka did not testify, so it is unknown what he understood the “supervise others” column encompassed. For AES Fox, the supervising others column was documenting the daily supervision he has over apprentice Huff’s work because Huff is still learning and is required to work under the supervision of a licensed journeyman. Additionally, when other departments are assisting the electric department, AES Fox will supervise their work as well. He will ensure the employees wear proper personal protective equipment (PPE) in compliance with OSHA standards and that the employees do not place themselves in

hazardous places. When this occurs, AES Fox is overseeing all employees that are assisting the electric department. This is not a new duty for AES Fox since becoming the AES.

The City contends the ES and AES have independent authority to discipline employees up to and including termination. Casady testified the positions do not need to consult with him prior to the issuance of discipline, but only for the purpose of informing him if he needs to start the process for a replacement. The record does not demonstrate that either ES or AES have issued discipline. AES Fox testified that he does not think he has the authority to issue discipline. He has never been informed by the City one way or another. When asked whether he has the ability to “write up an employee,” AES Fox testified he was never told that specifically but “I would think that I could do something like that.” It is unknown what precisely Fox meant with the term “writing up” an employee. The record does not demonstrate whether ES Cuka has been informed or knows whether he has the authority to discipline. Testimony provided by the public works (PW) working foreman indicates the City’s personnel policy states that discipline decisions are made by the City’s personnel committee. The City provided no evidence to dispute this testimony.

The City contends the ES and AES have independent authority to adjust employee grievances. Casady testified he does not know whether either Cuka or Fox have handled employee grievances, but asserts he would not have to be advised if they had. AES Fox testified he does not think he has the authority to adjust employee grievances. Like with disciplining employees, the City has not

informed him one way or another whether he has this authority. The record does not establish ES Cuka's understanding of whether he can adjust employee grievances. Testimony by PW working foreman indicated the City's personnel policy states that employee grievances are handled by the personnel committee. Meeting minutes from a July 2019 personnel committee meeting reveals the committee discussed a "possible union grievance" as part of the meeting. The City did not provide any evidence to dispute PW foreman's testimony that, by policy, employee grievances are only handled by the personnel committee.

The City contends the ES and AES "promote" other public employees because they sign off on the apprentice lineman's hours. The City is in a statewide apprenticeship program consisting of four steps. Each step has a required number of hours to be worked and testing to be conducted by the IAMU. As established by the log sheet, the ES and AES sign off on the apprentice's hours worked sheet that is submitted to the IAMU. Once the apprentice accumulates the required number of hours and testing, he is "promoted" to the next step in the apprenticeship program. Casady testified that "promotions" go through the personnel committee, but the ES and AES would notify the personnel committee when an apprentice "promotes" to the next step as a result of completing the required hours worked and testing. The City asserts this establishes the ES and AES promote other public employees.

1.7 Public Works Working Foreman

AFSCME presented testimony and evidence regarding the PW working foreman position. The position has been in existence since September 2019 and

is part of the bargaining unit. Brian Savery was hired into the position shortly after its creation in September 2019. At that time, Savery oversaw all the departments that were then under the public works umbrella, which included the electric department. Since the 2020 public works restructuring, Savery no longer oversees the electric department.

The union highlighted the job description and testimony of the PW foreman to argue the ES and AES are akin to the foreman or a lead worker position, not a supervisory employee as the City claims. The PW foreman's essential duties and responsibilities include:

- Oversees the construction for all department projects to insure their adequacy and timely completion
- Plans, supervises and reviews the activities of personnel who are engaged in carrying out street department functions to insure satisfactory operation and performance
- Reviews the work of subordinates to maintain efficiency and good morale
- Maintain good relationships between all city departments so that they can work together with more manpower and equipment for the betterment of the community
- Ability to supervise, direct and teach subordinates the procedures for every department's maintenance and repair, other necessary functions or tasks.

Savery has regular contact with the electric department employees as the City employees routinely work with each other. Savery is also on the on-call schedule for the electric department, which is a four-week rotation schedule during which Savery, ES Cuka, AES Fox, and apprentice Huff switch off being on-call for a week for emergencies and outages. Savery is not aware of anything in the ES and AES job descriptions that would preclude them from being in the bargaining unit. Savery does not have the authority to discipline employees or adjust their

grievances in his position, and he was advised the City's personnel policy directs that these matters are only handled by the personnel committee. Furthermore, Savery testified that he has the authority "to approve time sheets." It is unclear from the record whether this testimony refers to both approval of payroll timesheets and requests for time off. At a minimum, however, the testimony is sufficient to establish that he signs off on the payroll timesheets.

2. Issue Presented and the Parties' Arguments

The issue presented is whether the electric superintendent (ES) and the assistant electric superintendent (AES) are supervisory employees under Iowa Code subsection 20.4(2) and thus ineligible for inclusion in the bargaining unit.

The City argues the ES and AES positions have the authority to assign, direct, transfer, promote, discipline, suspend, discharge, and adjust grievances of other public employees. The City primarily relies on the log sheet completed by the ES and AES as evidence establishing the positions have and exercise supervisory authority.

AFSCME argues the ES and AES do not perform supervisory functions within the meaning of 20.4(2), but merely perform routine duties and responsibilities that a foreman or a lead worker generally performs. AFSCME further contends the ES and AES positions perform the same work as the electric foreman and lead journeyman positions the City eliminated, which were included within the bargaining unit.

3. Conclusions of Law and Analysis

Iowa Code section 20.4 excludes certain employees from coverage of its provisions. The relevant statutory language provides:

20.4 Exclusions.

The following public employees shall be excluded from the provisions of this chapter:

2. . . . and any supervisory employees. “*Supervisory employee*” means any individual having authority in the interest of the public employer to hire, transfer, suspend, lay off, 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. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

The Public Employment Relations Act is written in broad terms to allow a large number of public employees to be eligible for coverage under its provisions. *City of Eagle Grove and Teamsters Local 238*, 12 PERB 8459 at 6. Therefore, PERB interprets section 20.4 exclusions narrowly to accomplish this objective. *Id.* The party asserting the exclusion bears the burden of establishing that the exclusion applies. *Id.* at 7.

The enumerated functions in the definition of a supervisor are listed disjunctively, meaning that an employee’s possession of any one of the enumerated functions is sufficient to make the employee a supervisor. *City of Davenport and Public Emp’t Relations Bd.*, 264 N.W.2d 307, 314 (Iowa 1978); *City of Denison and Denison Police Ass’n*, 2021 ALJ 102443 at 8. However, to qualify as a supervisor, the statute also requires that the employee in question (1) have

authority, (2) to use independent judgment, (3) in performing such supervisory functions, (4) in the interest of management. *City of Davenport*, 264 N.W.2d at 314; *City of Denison*, 2021 ALJ 102443 at 8. These requirements are conjunctive and all four must be established to meet the statutory definition of a supervisor. *City of Davenport*, 264 N.W.2d at 314; *City of Denison*, 2021 PERB 102443 at 8.

The determination of supervisory status is a fact question which “involves 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. It is the existence of supervisory power and not its exercise which is determinative. *Id.* at 314. Supervisory power must exist in reality, not only on paper. *Id.* An employee’s title carries little weight in determining whether the position is supervisory. *Id.* “What the statute requires is evidence of actual supervisory authority ‘visibly translated into tangible examples.’” *Id.* The party asserting the exclusion must show the employee, by virtue of the responsibilities of the position, is substantially aligned with management. *Id.* at 314; *City of Denison*, 2021 ALJ 102443 at 8.

3.1 Authority to Assign and Responsibility to Direct Employees

The City contends the ES and AES are supervisory employees because they assign and have the responsibility to direct employees. The City primarily relies on the log sheet as evidence of this authority, such as the fact that the ES and AES dispatch employees, inspect and supervise the work of employees, and assist employees in the performance of their work. As previously stated, to meet

the statutory criteria, the City must establish the performance of the asserted supervisory function involves the use of independent judgment in the interest of management. Upon review of the record presented, the City has not established that the direction and assignment of work exercised by the ES and AES meets all the statutory requirements under 20.4(2).

The evidence presented is sufficient to conclude the ES and AES have the authority to assign and direct employees working in or assisting the electric department. The primary purpose of the ES and AES position, as established by their job descriptions, is to direct personnel and job assignments to ensure routine electric maintenance and emergencies are addressed. As such, the ES and AES provide daily assignment and direction of work by dispatching themselves or the apprentice to complete work orders. Additionally, if other employees are assisting the electric department, the ES and AES will direct the work they need to complete.

However, the evidence is insufficient to demonstrate the assignment and direction of work through dispatching requires or involves the use of independent judgment. "Assigning employees to work on a routine basis is insufficient to create supervisory status because it does not require independent judgment within the meaning of the statutory definition." *City of Davenport*, 264 N.W.2d at 321. Here, the assignment and direction of work appears to be made on the basis of availability and qualifications. The electric department consists of three employees, only two of whom are licensed journeyman. As established by this record, the ES and AES act routinely by dispatching the available or qualified

person to complete the work, including dispatching themselves. Furthermore, the evidence shows the ES and AES exercised this dispatch function in their prior positions, foreman and lead journeyman, both of which were part of the bargaining unit. Therefore, absent a showing that dispatching of employees involves the use of independent judgment, the City has failed to show the ES and AES are supervisory employees based on their responsibility to dispatch other employees.

The City also contends the ES and AES assign and direct the work of the electric department because they assist, inspect, and supervise the work of other City employees. It is well established the ES and AES do assist other employees, and inspect and supervise their electrical work. However, the record also establishes that they perform these duties in their capacity as the only licensed journeyman. The directing and assigning of work by a skilled employee to a less skilled employee does not involve the use of independent judgment when it is incidental to the application of the skilled employee's technical or professional know-how. *City of Davenport*, 264 N.W.2d at 314. Cuka and Fox similarly oversaw electrical work performed by other employees in their prior positions of electric foreman and lead journeyman, both positions that were part of the bargaining unit. As such, under the evidence presented, the City has failed to show the ES and AES are supervisory employees because they assist other employees, or inspect and supervise their electrical work.

Finally, the City argues the ES and AES are supervisory employees because they approve payroll timesheets and have authority to handle time off

requests. The City contends these tasks show the ES and AES have authority to assign and direct personnel.

The record establishes approval of timesheets and time off requests is new for the AES compared to his prior position of lead journeyman. It is unknown on this record whether the ES had responsibility over payroll timesheets and time off requests while he was the electric foreman. However, the record does establish that the PW foreman, a position that still exists and is included in the bargaining unit, approves time sheets for employees in the public works department. Additionally, the record fails to establish that either duty – approving timesheets or granting time off – involves or requires the use of independent judgment. It appears the approval of payroll timesheets is nothing more than an administrative task. Similarly, approval of time off requests appears to be made based on employee availability, a decision that does not involve the use of independent judgment. As such, even assuming the approval of time off requests and payroll timesheets indicates an authority to direct and assign personnel, the evidence presented does not establish that the ES and AES exercise independent judgment in the performance of these tasks, but merely act routinely.

3.2. Authority to Transfer Employees

The City asserts the ES and AES have authority to “transfer” employees from one job location to another in their daily assignment and direction of work. The record establishes the AES has sent an employee from one job site to another. For example, the AES has sent the apprentice to read a meter, a work order he can complete without supervision of a licensed journeyman, while the

AES responds to a different work order. Thus, in that context, it can be said that the ES and AES “transfer” employees from one job to another. However, this is insufficient to establish that the ES and AES have the authority to transfer employees within the meaning of the statute.

As an initial matter, the City’s example of a “transfer” is simply incidental to the daily and routine assignment of work. That is, if a work order requires the employee to physically go to a specific location, the employee must go to that different location to complete the work order.

Even assuming this scenario is a “transfer” as contemplated by the statute, the City still failed to demonstrate that the authority to transfer requires the ES and AES to exercise interdependent judgment. As with the daily assignment and direction of work previously discussed, “transferring” an employee from one work location to another is a routine decision based on the availability of employees and their qualifications.

3.3. Authority to Discipline, Suspend and Discharge Employees

The City contends the ES and AES have the authority to discipline, including suspending and discharging, other City employees. Other than Casady’s conclusory testimony claiming the existence of this authority, the City provided no evidence to support a finding the ES or AES can discipline employees.

The record does not show the City ever communicated to the ES or AES that they can discipline employees. The AES testified that he does not think he has the authority to discipline employees. The City responded by pointing out

that it never advised the AES that he lacked the authority to discipline employees. The City seems to argue the lack of evidence is merely attributable to the positions being new, not a lack of authority. It argues the AES would not know the extent of his authority because the position had only been around for about three months at the time of hearing. For the reasons discussed, the City's argument is unavailing.

The fact the positions are new is relevant when considering the opportunity to exercise the purported supervisory authority. "[I]t is the existence of the power and not its exercise which is determinative." *City of Davenport*, 264 N.W.2d at 314. In this case, given the positions were in existence for three months, the fact the ES and AES had not disciplined an employee in those three months is not determinative on the question of supervisory authority. However, the City has the burden to put forth some other evidence establishing the existence of the authority. "What the statute requires is evidence of actual supervisory authority 'visibly translated into tangible examples.'" *Id.* Here, the City's only response is that it never told the AES he could not discipline employees. This is insufficient to establish the existence of supervisory status on this basis.

Furthermore, testimony provided by the PW foreman indicated the City's personnel policy dictates that the discipline of employees is determined by the personnel committee. The City did not dispute his testimony or otherwise establish its inaccuracy. As such, the record as a whole indicates the personnel committee has the authority to discipline employees, not the ES or AES.

3.4 Authority to Adjust Employee Grievances

The City asserts the ES and AES have authority to adjust employee grievances. However, other than Casady's conclusory testimony claiming the existence of this authority, the City did not provide any evidence to support a finding the ES and AES can adjust employee grievances.

The record does not show the City ever communicated to the ES or AES that they have the authority to adjust employee grievances. The AES testified he does not think he has this authority. The City's response to his testimony was to highlight that the City never told him he lacked the authority to adjust employee grievances. As with the authority to discipline, the City argues the ES and AES are new positions that have not had the opportunity to exercise their new supervisory authority or to yet learn the parameters of their supervisory authority. This argument, for the same reasons previously discussed, is unavailing. The City is not required to show the exercise of the claimed supervisory authority, *i.e.* that the ES or AES have adjusted an employee's grievance during the three-month period in their new positions. However, the City must present some evidence to demonstrate the existence of the authority. All this record contains is the City's conclusory assertion that the authority exists without any evidence to support that finding. As such, the City has not established the ES and AES have the authority to adjust employee grievances.

Furthermore, testimony provided by the PW foreman indicated the City's personnel policy dictates that employee grievances are handled by the personnel committee. The City did not dispute his testimony or otherwise establish its

inaccuracy. As such, the record as a whole indicates the personnel committee has the authority to adjust employee grievances, not the ES or AES.

3.5 Authority to Promote Employees

The City claims the ES and AES are supervisory employees because they have the authority to “promote” the apprentice lineman. The City hinges its argument on the established fact that the ES and AES verify to the IAMU the apprentice’s number of hours worked. This is insufficient to establish the authority to promote within the meaning of the statute.

The ES and AES’s involvement in the apprentice’s “promotion” within the apprenticeship program is merely administrative. Their sole task is to verify the apprentice’s hours worked and sign off on the same on the IAMU sheet. Nothing about this duty requires the ES or AES to use independent judgment. The IAMU dictates the required testing and number of hours an apprentice must work to advance a step or complete the four-step program. Thus, promotion within the apprenticeship program, is solely determined by the IAMU, not the ES or AES.

The record similarly fails to establish that the ES or AES have authority to promote the apprentice in their job with the City. Casady acknowledged the personnel committee determines promotions. However, the City argues the ES and AES can initiate a promotion by informing the personnel committee the apprentice completed the apprenticeship program. This is the extent of their involvement in any promotion the personnel committee may subsequently give to the apprentice. Having the ability to communicate information is insufficient to establish the ES or AES have the authority to promote within the meaning of

the statute. The record plainly establishes the authority to promote the apprentice belongs to the personnel committee, not the ES or AES.

3.6 Conclusion

Based on the record presented, the City has not established the electric superintendent and assistant electric superintendent are supervisory employees as defined by Iowa Code subsection 20.4(2). Consequently, in accordance with Iowa Code section 20.13, I find it appropriate to add the electric superintendent and assistant electric superintendent to the existing bargaining unit. For the reasons stated, I propose the entry of the following:

ORDER

The employee organization's petition to amend the existing bargaining unit is GRANTED. The bargaining unit previously determined in Case No. 8505, and the certification of AFSCME Council 61, is hereby amended to read as follows:

INCLUDED: maintenance operations coordinator, cemetery sexton/street foreman, electric superintendent, assistant electric superintendent, electric foreman, water/sewer foreman, wastewater treatment plant worker, street/cemetery crew worker, electric crew worker, water/sewer crew worker, shop/maintenance worker, administrative assistant, deputy clerk, and community center staff.

EXCLUDED: city administrator, police chief, assistant police chief, city clerk, community center director, police officers, and seasonal workers.

This proposed decision will become PERB's final decision on the unit amendment petition pursuant to PERB rule 621—9.1 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 30th day of December, 2021.

/s/Jasmina Sarajlija
Administrative Law Judge

Electronically filed.
Parties served via eFlex.