

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	)	
DAVENPORT COMMUNITY SCHOOL DISTRICT, Public Employer,	)	CASE NO. 102523
and	)	
AFSCME IOWA COUNCIL 61, Certified Employee Organization/Petitioner.	)	
DAVENPORT COMMUNITY SCHOOL DISTRICT, Public Employer,	)	CASE NO. 102528
and	)	
DAVENPORT EDUCATIONAL SERVICES ASSOCIATION, Certified Employee Organization/Petitioner.	)	

PROPOSED DECISION AND ORDER

On December 17, 2020, AFSCME Iowa Council 61 (AFSCME) filed an amendment of bargaining unit petition with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.13 and PERB rule 621—4.6(20). The petition seeks to amend the existing AFSCME-represented bargaining unit of paraeducators employed at the Davenport Community School District (District) to include various student support liaison (SSL) positions.

Less than a month after AFSCME filed its petition, the Davenport Educational Services Association (DESA) filed a combined unit determination and representation petition. In this petition, DESA sought to create a bargaining

unit that included liaison, coach, or coordinator positions, including the SSL positions.

Because the two cases appeared to involve common questions of law or fact, the cases were consolidated for hearing. Pursuant to notice, the undersigned ALJ conducted a consolidated hearing by video conference on March 3, 2021. Earlene Anderson and Rick Eilander represented AFSCME. Christy Hickman and Katie Schoolen represented DESA. Aaron Hilligas represented the District.

At the time of the hearing both AFSCME and DESA amended their respective petitions without objection from the other parties. AFSCME's amended petition would only add the following positions to the existing bargaining unit (AFSCME paraeducators unit): SSL-Redirection, SSL-Special Education, and SSL-CEIS. DESA amended its petition so its included positions in the bargaining unit would also include the TAP work experience coordinator. DESA's proposed unit description would be as follows:

**INCLUDED:** Juvenile court liaison, family involvement liaison, cultural liaison, student support liaison, special education student support liaison, transition alliance program (TAP) coordinator, TAP work experience coordinator, attendance coach, work experience liaison, life skills/student service coach, leader in me support liaison, high school/community college liaison, and any other employee performing educational services as a liaison, coach or coordinator.

**EXCLUDED:** Employees of the Davenport Community School District covered by another collective bargaining agreement with the District, temporary employees, administrative employees, and all other employees excluded under Section 20.4 of the Iowa Public Employment Relations Act.

Both AFSCME and DESA submitted post-hearing briefs on or before April 16, 2021.<sup>1</sup> Pursuant to Iowa Code section 17A.14(4), I took official notice of the original PERB certification and bargaining unit description and all subsequent amendments for the existing AFSCME paraeducators bargaining unit as provided in PERB Case Nos. 2323, 4589, 5731, 8479, and BU-0825.

In its amended petition, AFSCME seeks to add the SSL-Redirection, SSL-Special Education, and SSL-CEIS positions to its existing bargaining unit. In its amended petition, DESA seeks to include the same three positions in a new DESA-represented unit, along with other liaisons, coaches and coordinators. The parties dispute whether the AFSCME-represented unit is an appropriate bargaining unit for the SSL-Redirection, SSL-Special Education, and SSL-CEIS positions. As the parties only raised the issue of whether the SSLs are appropriate to include in AFSCME's existing paraeducator unit, this decision will only address that issue.

## **1. Findings of Fact**

### **1.1 Background Facts**

The Davenport Community School District is a public employer within the meaning of Iowa Code section 20.3(10). AFSCME Iowa Council 61 and DESA are employee organizations as defined in Iowa Code section 20.3(4).

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<sup>1</sup> In addition to its post-hearing brief, DESA also submitted a miscellaneous document labelled "Appendix 1." As the miscellaneous document was not entered into evidence, it was not considered when reaching the proposed decision.

Davenport Community School District currently has six bargaining units of employees. AFSCME Iowa Council 61 represents three of those units: the food service unit, the clerical unit, and the paraeducator unit. AFSCME Local 751 represents a unit of custodial, warehouse, security and copy center employees. Davenport Community School Maintenance Employees Organization represents a unit that includes buildings and grounds workers, and garage technicians among other employees. Davenport Education Association represents the certified professional employees. If determined, DESA would establish a seventh bargaining unit which would include liaisons, coaches, and coordinator positions.

The existing paraeducators unit formed in the early 1980s and were originally represented by the Davenport Association of Aides. The certification of the unit has been amended multiple times, mostly recently in 2012, to reflect AFSCME as the certified employee organization. The current bargaining unit as represented by AFSCME is described as follows:

**INCLUDED:** All educational aides, including all educational aides in classifications I, II, III, Teacher clerical aides, library clerical aides, special education program aides, and vocal music accompanists.

**EXCLUDED:** Temporary employees, any employee of the Davenport Community School District that is covered under another collective bargaining agreement with the District, all administrative personnel of the District and all other employees excluded under Section 20.4 of the Iowa Public Employment Relations Board Act.

The District currently employs almost 2,700 employees. The District employed SSLs for many years, but the District expanded the numbers of SSLs

in the past couple of years. The District employs 31 special education SSLs, two CEIS SSLs, and four general education or redirection SSLs.

The AFSCME paraeducators unit contains over 500 employees. The AFSCME paraeducators unit, through its amendment of unit petition, seeks to add just under 40 SSL positions to its current bargaining unit.

DESA also seeks to include the SSLs in its proposed unit. DESA's proposed unit would consist of approximately 80 employees, including the roughly 40 SSL positions.

### 1.2. AFSCME's and DESA's organizing efforts

The AFSCME paraeducators unit discussed amending the unit to include SSLs prior to filing the petition with PERB. At least one SSL heard about these discussions, but that person did not formally hear anything from AFSCME about including the SSL positions in the existing paraeducators unit. AFSCME filed its petition to amend its bargaining unit to include SSLs in December 2020, and PERB created documents to notify the affected employees about the petition. The District, pursuant to notice, distributed this notice to the SSLs.

Conversely, ISEA formally contacted SSLs to gauge the SSLs' interest in organizing with DESA as the certified employee representative. An ISEA representative emailed all the SSLs and told the SSLs that ISEA was potentially organizing a bargaining unit. ISEA informed the SSLs of the steps to take if interested in organizing. After SSLs had received this information from ISEA and had taken steps to organize the unit and certify DESA as the representative, the SSLs then received the information about AFSCME's amendment of unit petition.

The District did not take a stance on whether the AFSCME paraeducators unit should include the SSLs. The District believes the SSL position is eligible to organize under chapter 20.

### 1.3. SSL position information versus paraeducators position information

The parties presented evidence as to the nature of the SSL position generally. Some evidence in the record detailed a particular aspect of one of the three SSL positions (SSL: Redirection, SSL: Special Education, or SSL: CEIS), but most evidence in the record applied to all three of the SSL positions at issue. Thus, when this decision refers to SSLs, that term encompasses the positions of SSL: Redirection, SSL: Special Education, and SSL: CEIS.

Similarly, the parties presented evidence on the nature of the paraeducators position generally. Some evidence in the record applied only to one particular type of paraeducator, but most evidence in the record applied to paraeducators generally.

At the hearing two paraeducators and two SSLs testified. The paraeducators claimed the job description for the SSLs was basically identical to what a paraeducator does. The SSLs testified the SSL and paraeducator positions are distinct.

In comparing the SSL and the paraeducator positions, I find some similarities, but many distinct characteristics of the two positions. When questioned about specific job functions, the witnesses clarified some of those differences. Additionally, I do not find the paraeducators' general testimony that the SSL and paraeducator positions are identical credible as the paraeducators

noted they did not work with SSLs very often and thus did not have sufficient knowledge to testify as to the specific job duties of SSLs. However, at least one of the SSLs has previously worked as a paraeducator in the District and had sufficient information to testify as to the similarities and differences of the positions.

1.3A. *SSLs and paraeducators: General terms and conditions of work*

The SSLs and paraeducators have some similarities in the general terms and conditions of work, but also have significant differences.

Generally, the District pays SSLs and paraeducators at a different rate of pay. SSLs have a higher starting wage than paraeducators. The AFSCME contract also currently contains different rates of pay between paraeducator positions. Paraeducators have different pay levels for paraeducators that perform different types of work.

The District compensates SSLs and paraeducators for a different amount of hours and days. The District asserts that SSLs work eight hours per day. The District maintains that paraeducators, depending on the position, work anywhere from four to seven hours a day. Under the individual contracts between the District and the SSLs, the SSLs work 195 days per school year. The District and AFSCME's collective bargaining agreement dictates that paraeducators work 178 days per school year.

The SSLs and the paraeducators receive similar types of leaves of absence, but the amounts of the leaves of absence are dissimilar. Both SSLs and paraeducators receive nine holidays per school year. SSLs receive roughly two to

three weeks of sick leave, but can accumulate sick leave from year to year. Paraeducators receive 10 days of sick leave at the beginning of each year, but add one additional day for each year of service up to a maximum of 15 days of sick leave. Paraeducators can accumulate health leave from year to year with no maximum limit. SSLs also have one to two emergency leave days per year. Paraeducators, under the AFSCME contract, have three emergency leave days per school year and can accumulate up to six days of emergency leave.

The SSLs and paraeducators receive similar types of benefits, but the cost to the employee is not identical. The District offers SSLs and paraeducators life, medical, dental, and vision insurance as well as other benefits. However, SSLs pay a portion of their individual health insurance. Paraeducators, as a result of AFSCME's negotiations with the District, do not pay a portion of their individual health insurance.

Finally, both SSLs and paraeducators work in school buildings. Both SSLs and paraeducators are stationed at one school building throughout the school year.

### *1.3B SSLs and paraeducators: Special qualifications and education*

The District does not require either SSLs or paraeducators to have a bachelor's degree. The District prefers that SSLs have a bachelor's degree in a related field for at least the SSL-Redirection position, but the District does not require that as a precondition for hire. Most SSLs at the high school level have either an associate's degree or a bachelor's degree. The District also does not require paraeducators to have a bachelor's degree.



### 1.3C SSLs and paraeducators: Job duties and responsibilities

SSLs and paraeducators share similar goals for success in carrying out job duties and responsibilities, but SSLs and paraeducators do not perform the same job duties and do not have the same job responsibilities. The District expects both SSLs and paraeducators to develop positive and meaningful relationships. The District expects that SSLs and paraeducators become familiar with student support systems. The District requires SSLs and paraeducators to collaborate with other school staff. The District expects SSLs and paraeducators to oversee an individual students' recommendations and programming. The District requires SSLs and paraeducators to work with a student to assist that student in behavioral choices. The District needs SSLs and paraeducators to de-escalate situations that may arise. The District expects that SSLs and paraeducators motivate positive attitudes in the students with whom they work. The District requires SSLs and paraeducators to maintain a good attendance record. The District demands that SSLs and paraeducators collaborate to ensure the District meets the students' accommodations.

The SSLs and the paraeducators work with students, but the job duties and responsibilities for the positions are different. An SSL must conduct fidelity checks as one of the main duties for the position.<sup>2</sup> When conducting a fidelity check, an SSL ensures the teachers, paraeducators, and others working in the classroom carry out the components of a student's IEP (individualized education

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<sup>2</sup> At least one paraeducator noted that paraeducators have performed fidelity checks in the past. The evidence in the record demonstrates that paraeducators no longer perform this role.

plan) or BIP (behavior improvement plan) with fidelity. The SSL observes and uses the information from teachers and paraeducators to determine if the student is meeting goals. The SSL checks to see if there is a breakdown in carrying out the BIP or IEP. The SSL may talk to the teacher and find out the reason one of the pieces of a plan, such as a required accommodation, was not delivered. The SSL would also check the status of the BIP or IEP for an individual student. An SSL's goal in conducting a fidelity check is to facilitate better support for the student. Although a paraeducator may also have the goal to facilitate better support for the student, the paraeducator does not conduct such fidelity check to achieve this goal. The goals of the SSLs and the paraeducators are similar, but the duties and the responsibilities of the position to achieve that goal are different.

Additionally, both SSLs and paraeducators have some access to confidential information, such as IEPs. The SSLs and paraeducators' access to this information varies.

SSLs and paraeducators need to know the contents of the IEP for the student with whom they are working. An SSL has more access to the IEP than a paraeducator. An SSL can see and review a student's IEP without approval from a teacher generally. A paraeducator may see an IEP or may merely be told about what is in the IEP, depending on the circumstances. The teachers with whom the paraeducators work determine the amount of access the paraeducator has to the IEP.

Both SSLs and paraeducators collect data and keep a log of that data. The SSLs' purpose in collecting that data is different than the purpose for the paraeducators in keeping that data. An SSL collects data for fidelity checks. The SSLs may share that data with teachers, case workers' or school administrators. The District trained SSLs to keep track of this type of data in a weekly data log.

Paraeducators also collect data. A paraeducator keeps records on the students with whom they interact. The paraeducator keeps a log of what the students are doing. This data goes to the supervising teacher.

### *1.3D SSLs and paraeducators: Daily routine and supervision*

SSLs do not have the same type of daily schedule as a paraeducator. The primary focus for an SSL is to collect data. The SSL determines how to fulfill this job responsibility. An SSL's job is largely self-guided. The SSL may talk to a principal or other people at the school about what to do and may collaborate with other persons in the building. But the SSL chooses how to plan the day and how to prioritize work. An SSL works in multiple classrooms in a day with many different students. The SSL defines his or her own schedule, and may reorganize that schedule as needs arise.

A paraeducator does not choose how to accomplish his or her tasks throughout the day. The teachers determine the paraeducators' schedule. The paraeducator works with students as directed by the teachers throughout the day.

An SSL works with teachers, case managers, counselors, probation officers, and social workers throughout the day. SSLs develop community agency

linkages to support the academic and well-being of students. The record is devoid of information regarding a paraeducators' primary work contacts.

Building principals act as the supervisor for both SSLs and paraeducators. The principal effectively recommends hiring, firing, promoting, and demoting employees in the SSL and paraeducator positions.

Although the building principal supervises both the SSL and the paraeducator, the positions do not have similar interactions with coworkers in the school building. An SSL interacts with others in the building as a colleague, not as a subordinate. The SSLs do not take direction from the teachers. Because of the position and training the SSLs receive, SSLs model appropriate de-escalation techniques and accommodations with or to other staff members, such as teachers and paraeducators. Paraeducators generally work the most with teachers and the teachers direct paraeducators' work. Depending on the setting paraeducators may work primarily with one teacher, such as in an elementary school setting, or may work with many teachers. An SSL's interaction with coworkers and a paraeducator's interaction with coworkers is different.

### *1.3E SSLs and paraeducators: Training*

SSLs and paraeducators all receive training. The training differs by position due to the different responsibilities and requirements of the SSL and paraeducator positions. SSLs attend a two-week intensive training in the summer. This training is specific for SSLs. During the training, the SSLs discuss record keeping necessary for fidelity checks. The training also involves discussion on crisis prevention and intervention.

The District also maintains a Crisis Response and Violence Prevention team. This team leads the District on crisis response training. The team includes some SSLs due to the nature of their role within the school, but does not include any paraeducators.

Paraeducators receive training as well. Paraeducators may receive training from the Area Education Agency before the school year begins. The paraeducators may have some specific training. The paraeducators often also attend building specific training.

A group of paraeducators that worked at the District's Keystone school used to receive training similar to the training SSLs receive. When Keystone closed, students and staff were reintegrated into the neighborhood schools. Thus, that group of paraeducators no longer receives that specialized training.

The training for the SSLs is different than the training for paraeducators due to the different roles of the positions within the school.

## **2. Summary of Arguments**

AFSCME seeks to amend its bargaining unit of paraeducators to include the SSL-Redirection, SSL-Special Education, and SSL-CEIS positions. DESA seeks to form a unit that includes liaisons, coaches, and coordinators, which would encompass the SSL-Redirection, SSL-Special Education, and SSL-CEIS positions. The scope of the hearing was limited to whether AFSCME's amendment of unit petition was appropriate using the 20.13 factors, and considering DESA's pending petition. The hearing did not address and this

decision will not address whether the SSLs are appropriate to be included in DESA's proposed unit.

AFSCME argues the job duties and work assignments of the three SSL positions at issue parallel the job duties and work assignments of the paraeducators currently in the AFSCME unit. AFSCME also contends the District removed paraeducators from the bargaining unit when it added more SSL positions that essentially perform the same functions that some paraeducators used to perform.

DESA argues the positions at issue are not appropriate in the existing AFSCME unit especially considering its own pending petition to include those positions in its proposed unit. DESA claims the three SSL positions have marked distinctions from the paraeducators including the duties performed, professional responsibilities, the wage and salary, the hours of work and contract length, the supervisors, the minimum qualifications, and the training. DESA also argues the SSLs at issue are professional employees, which is a distinction from the paraeducators. DESA contends the 20.13 factors demonstrate the SSLs at issue are not appropriate to add to the AFSCME unit, given DESA's pending unit determination petition.

### **3. Conclusions of Law and Analysis**

The issue before me is whether the SSL-Redirection, SSL-Special Education, and SSL-CEIS positions are appropriate to be amended into AFSCME's paraeducator bargaining unit, especially in light of the pending DESA petition to include the same positions in its proposed bargaining unit.

To determine an appropriate unit, PERB evaluates the factors listed in Iowa Code section 20.13, subsection 2. *Muscatine Cty. and AFSCME/Iowa Council 61*, 2013 H.O. 8396 at 7. That subsection provides:

. . . the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendations of the parties involved.

Iowa Code § 20.13(2). PERB's evaluates the factors on a case-by-case basis. *Muscatine Cty.*, 2013 H.O. 8396 at 7. The case-by-case approach is not a precise science, but requires that PERB consistently apply the factors to balance the statutory criteria. *Cedar Rapids Airport Comm'n and Cedar Rapids Airport Prof'l Firefighters Ass'n, Local 2607, Int'l Ass'n of Firefighters*, 79 PERB 1206 at 3 (decision on remand). PERB considers all section 20.13 factors, but gives weight to the factors deemed most relevant in the circumstances of each case. *City of Waukee and Commc'ns Workers of America, Local 7102*, 2002 HO 6413, 6515, at 15.

After reviewing the particular facts in this case using a consistent application of the section 20.13 factors, I conclude it is not appropriate to amend the three SSL positions into the AFSCME bargaining unit.

### 3.1 Efficient administration of government

The Supreme Court of Iowa recognized the efficient administration of government factor requires "the designation of the fewest number of bargaining units possible consistent with the requirement that employees be permitted to form organizations of their own choosing to represent them in a meaningful and

effective manner.” *Anthon-Oto Cmty. Sch. Dist. v. Pub. Emp’t Relations Bd.*, 404 N.W.2d 140, 143 (Iowa 1987); *Woodbury Cty. and Commc’ns Workers of America*, 2015 PERB 8792, 8794, and 8795, at 16–17. The District has six bargaining units currently, and DESA will become the seventh. If the SSLs are amended into the AFSCME paraeducators unit, the District will likely have seven units. DESA can still form a unit without including the SSL positions at issue in this case. If the SSLs are not amended into the AFSCME paraeducators unit, the SSLs may be included in the DESA bargaining unit, and the District will have seven units. As the number of units in the District remains the same regardless of the SSLs’ amendment into the AFSCME unit, this factor bears little weight in determining an appropriate bargaining unit.

### 3.2 Community of interest

The community of interest factor requires PERB to examine whether similarities exist between relevant positions in the unit. *Woodbury County*, 2015 PERB 8792, 8794, and 8795 at 17. When addressing the community of interest factor PERB examines the similarity of the general terms and conditions of employment, fringe benefits, degree of similar job qualifications, training, and skills. *Mid-Prairie Cmty. Sch. Dist. And Mid-Prairie Educ. Ass’n*, 1985 PERB 2595, at 5. The community of interest between the SSLs and the paraeducators is slight with many marked differences.

SSLs and paraeducators have the same holidays and utilize the same types of leave. But SSLs and paraeducators do not have identical leaves of absence. SSLs and paraeducators have similar life, vision, health, and dental insurance



provided by the District. But SSLs pay a portion of their individual health insurance and paraeducators do not.

SSLs and paraeducators have distinct terms and conditions of employment. SSLs have a higher starting pay than paraeducators. SSLs work more hours per day and more work days per school year.

SSLs and paraeducators work with other school staff and work with students toward the common goal of facilitating better support for in the District. The job responsibilities and duties to achieve that goal are different. Additionally, the SSLs' and paraeducators' roles within the school to accomplish those goals are different.

SSLs and paraeducators have different job duties and responsibilities. SSLs perform fidelity checks. During the fidelity checks the SSLs specifically examine how paraeducators and teachers interact with students to ensure the students' BIPs and IEPs are followed and the students' accommodations are enforced. To accomplish fidelity checks, SSLs have greater access than paraeducators to confidential records such as the IEPs and BIPs. Although SSLs and paraeducators collect data and keep logs, the data collected and reports written are for different purposes. Paraeducators keep logs for the teachers. SSLs keep data and logs for fidelity checks.

SSLs' and paraeducators' daily routines are different. The SSLs set their own daily schedule to accomplish necessary tasks and can reorganize that schedule as needs arise. Teachers set the paraeducators' daily schedule.

SSLs and paraeducators also have different interactions with school personnel. SSLs answer to the building principal and other school administrators. Paraeducators answer to the teachers and the building principal. SSLs interact with teachers as colleagues and do not take direction from them as a paraeducator does. Further, SSLs act as a check on the paraeducators and teachers when fulfilling fidelity checks. SSLs also model appropriate de-escalation techniques and student accommodations to other school staff including teachers and paraeducators.

SSLs and paraeducators also complete different training. SSLs engage in specialized training with other SSLs. Paraeducators are not involved in that training. The training for SSLs is specific to their job duties. This training also allows SSLs to model the behavior learned in the training to other staff members. SSLs disseminate training to the rest of the building. As paraeducators do not model specific behaviors to other staff members, the paraeducators are not included in this type of training.

The community of interest factor shows only slight similarities between the SSL and paraeducator positions. The SSLs and paraeducators have far more differences than similarities, while both working toward the goal of assisting the District's students. The SSLs and paraeducators play different roles in the hierarchical structure of the school and serve a different function in the staff relationships in the school. When comparing an SSL's job responsibilities and a paraeducator's job responsibilities on paper, the two positions look similar. When examining the reality of the job functions performed as well as the terms

and conditions of employment, fringe benefits, training and skills, the evidence demonstrates the two positions do not have extensive similarities. Further the role of SSL conflicts with the role of the paraeducator. The SSL checks whether paraeducators and teachers fulfill the criteria in students' IEPs and BIPs. SSLs also model appropriate behavior in fulfilling students' accommodations and deescalating a situation to paraeducators and teachers. For the reasons described above, the record in this case does not contain enough evidence of similarities between the SSL and paraeducator positions to weigh in favor of amending the SSLs into the AFSCME paraeducators unit.

### 3.3 History and extent of public employee organization

When examining the history and extent of organization, PERB examines which employees the union focused its efforts to organize as well as whether the employees have an interest in organizing. *Woodbury Cty.*, 2015 PERB 8792 8794, and 8795, at 25–26. PERB cannot determine that a unit is or is not appropriate based on the history and extent of public employee organization factor alone, but the factor can give weight in finding a unit appropriate if that determination is supported by other facts. *Id.* at. 26.

The history and extent of organization factor provides no weight for finding AFSCME's amendment of unit is appropriate. The record provides little clarity on the mechanics and planning of AFSCME's organizing efforts in this case. AFSCME presented scant evidence regarding its discussions with its current bargaining unit members on amending the SSLs into the bargaining unit. Nor did AFSCME present evidence describing discussions or communications with

the SSLs or whether any of the SSLs were interested in being included in the AFSCME paraeducators unit.

AFSCME did not present sufficient evidence to demonstrate the history or extent of employee organization factor should weigh in favor of finding AFSCME's amendment of unit is appropriate.

Conversely, DESA presented evidence regarding its organization efforts as well as some employees' interest in organization. DESA contacted the SSLs, told the SSLs the steps to organize, and presented evidence that at least some SSLs were in favor of being represented by DESA. DESA's organization efforts demonstrate that at least some SSLs disfavor inclusion in the AFSCME paraeducator unit as some SSLs are seeking inclusion in DESA's proposed unit. This further establishes the history and extent of organization factor weighs against a finding that AFSCME's amendment of unit is appropriate.

#### 3.4 Geographical location

When evaluating the weight of the geographical location factor PERB noted that geographical location is not controlling where the principal work locations are within the same city and relatively close to one another. *Woodbury Cty.*, 2015 PERB 8792, 8794 and 8795, at 24. The District employs SSLs and paraeducators at school buildings across the District. The District does not have one primary work location for all SSLs or for all paraeducators. As the SSLs' and paraeducators' primary work locations are spread across the District, this factor bears little weight in the determination of an appropriate bargaining unit.

### 3.5 Recommendation of parties involved

When determining an appropriate bargaining unit, PERB gives controlling weight to the recommendations of the parties. The Board would likely approve the stipulated agreement of the parties as long as the composition of the unit was not repugnant or inimical to Iowa Code chapter 20. *Woodbury Cty.*, 2015 PERB 8792, 8794, and 8795 at 25. AFSCME seeks to add the SSL positions to its bargaining unit. DESA seeks to include the same SSL positions in its proposed unit. DESA claims the SSLs are not appropriate to include in the AFSCME paraeducators unit. The District does not take a position. The parties failed to reach a unanimous recommendation; thus, the recommendation of the parties' factor bears little weight in the determination of an appropriate bargaining unit.

### 3.6 Other relevant factors

Finally, DESA claims the status of SSLs as professional or nonprofessional employees is a relevant factor to consider when determining whether SSLs should be amended into AFSCME paraeducators bargaining unit. DESA contends the SSLs are professional employees and the paraeducators are not professional employees as defined by Iowa Code chapter 20. DESA argues this difference demonstrates SSLs are not appropriate to include in the AFSCME paraeducators bargaining unit.

The above listed Iowa Code section 20.13 factors demonstrate AFSCME's proposed amendment is not appropriate. Thus, I do not deem it necessary to determine whether SSLs are professional employees. If I conclude SSLs are

professional employees, that would lend some weight to finding the SSL position is not appropriate to include with the paraeducator position, although that difference would not control the outcome of the case. If I determine SSLs are not professional employees, I would still conclude that SSLs are not appropriate to amend into the AFSCME paraeducators unit, even though both the SSL position and the paraeducator position were nonprofessional as defined by the statute.

#### **4. Summary of Conclusions**

After evaluating all the Iowa Code section 20.13 factors in light of the facts of the case, I conclude that amending the AFSCME bargaining unit to include the SSL-Redirection, SSL-Special Education, and SSL-CEIS positions is not appropriate, especially when acknowledging DESA's pending petition. In evaluating the community of interest factor, I determine that SSLs and paraeducators share only slight similarities, but notable dissimilarities exist between SSLs and paraeducators. When examining the history and extent of organization, I conclude insufficient evidence exists to determine that AFSCME engaged in organization of the SSLs in such a manner that would lead to a finding the amendment is appropriate. Further, I determine insufficient evidence exists that SSLs desire to be organized and included in the AFSCME paraeducators unit.

I cannot conclude AFSCME's petition to amend the three SSL positions into the paraeducator unit appropriate given the facts in the record.

**ORDER**

**Case No. 102523**: AFSCME's petition to amend the bargaining unit is DISMISSED.

This proposed decision will become PERB's final decision on AFSCME's amendment of bargaining unit 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.

**Case No. 102528**: Due to the passage of time, DESA shall submit a new showing of interest to PERB pursuant to PERB rule 621—4.3(2). DESA shall submit the showing of interest to PERB within 10 days after the proposed decision in Case No. 102523 becomes final.

After DESA has submitted the showing of interest, PERB will order the District to provide an employee list. PERB will determine the sufficiency of the showing of interest using that list. PERB will then proceed to determine whether DESA's unit determination petition is appropriate.

When the proposed decision in this case becomes final, Case No. 102523 and Case No. 102528 will no longer be consolidated. All future filings for Case No. 102528 shall be filed in EDMS under Case No. 102528.

DATED at Des Moines, Iowa, this 14th day of October, 2021.

/s/ Amber DeSmet  
Administrative Law Judge

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