

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF:	)	
CITY OF WATERLOO, Public Employer,	)	CASE NO. 102621
and	)	PROPOSED DECISION AND ORDER
AFSCME IOWA COUNCIL 61, Certified Employee Organization, Petitioner.	)	

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On September 23, 2021, AFSCME Iowa Council 61 filed a combined bargaining unit determination and representative certification petition with the Public Employment Relations Board (PERB) pursuant to Iowa Code sections 20.13 and 20.14 and PERB rules 621 IAC 4.1 through 4.4. AFSCME requests that PERB determine a bargaining unit appropriate for purposes of collective bargaining that is comprised of the fire department battalion chiefs employed by the City of Waterloo (City). The City resists the petition and asserts that the battalion chief position is excluded from coverage under Iowa Code section 20.4.

Pursuant to notice, a hearing on the unit determination was conducted before the ALJ by video conference on December 8, 2021. Ann Smisek represented the City. Robin White represented AFSCME. The parties submitted post-hearing briefs by February 15, 2022.

After review of the record and consideration of the parties' arguments, I conclude the battalion chiefs are not eligible for inclusion in a bargaining unit.

## **1. FINDINGS OF FACT**

### **1.1 Fire Department Overview**

The City of Waterloo is a public employer within the meaning of Iowa Code section 20.3(10), and AFSCME Iowa Council 61 is an employee organization as defined in Iowa Code section 20.3(4).

The City of Waterloo has six fire stations, the downtown fire station and then five other substations. The City's fire department consists of approximately 116 employees. The department has roughly 110 sworn firefighters. Some of the employees in the fire department are included in a bargaining unit that consists of uniformed firefighters, paramedics, fire engineers, lieutenants, medical officers, captains, and the fire marshal. Battalion chiefs are excluded from this existing bargaining unit.

Pat Treloar serves as the fire chief for the fire department. The department has not had an assistant fire chief since the 1990s. Three battalion chiefs serve as the next in command under the fire chief and directly report to the chief. The fire marshal also directly reports to the fire chief and is a member of the command staff. A lieutenant in charge of training also directly reports to the chief and one of the battalion chiefs. The medical supervisor oversees the medical division and directly reports to the chief while consulting with battalion chiefs when the area affects their operations.

Most employees at the fire department work on one of the three shifts, the A shift, the B shift, and the C shift. A battalion chief, also known as the shift commander, is assigned to one of these three shifts. Each shift also has a captain

that is second in charge of the shift. The Waterloo fire department employs a total of three battalion chiefs and three captains. Both the battalion chief and the captain work at the downtown fire station and are in charge of that station. Each shift also consists of company officers also known as lieutenants. The lieutenants are in charge of the substations in Waterloo. Below the lieutenant in the hierarchy is the engineer that operates an assigned vehicle apparatus.

## 1.2 Battalion Chief Position

There are three battalion chiefs in the Waterloo fire department. The battalion chiefs have an operational role and an administrative role in the department. All three battalion chiefs exercise the same operational duties for the department. The battalion chiefs also have administrative duties that are assigned to them based on the shift the battalion chief oversees.

### 1.2.1 *Battalion Chiefs' Operational Duties*

The battalion chiefs meet with the chief every morning for a debriefing during shift transitions. The battalion chiefs also meet with the chief prior to the department's monthly staff meeting. In that meeting the battalion chiefs and the chief discuss matters that are sensitive to the fire department's bargaining unit.

The battalion chief also acts on behalf of the chief when the chief is unavailable. In this type of situation, the battalion chief would handle anything that comes in that needs to be addressed while the chief is gone.

The battalion chief is the primary employee in charge of the shift. The battalion chief ensures that his or her shift runs smoothly. Under the battalion

chief, the captain on the shift acts as the mid-manager and assists the battalion chief. The battalion chief delegates work to the captain.

The battalion chief oversees a shift, which generally has thirty-five members. The battalion chiefs set the priorities throughout the day. They work in conjunction with the training officer to ensure training is scheduled as needed. The battalion chief will also set the schedule for when an apparatus will go out to the training.

The battalion chiefs automatically respond to a number of serious emergency calls such as confirmed fires and car wrecks on highways that have a speed limit of above 45 miles per hour. Battalion chiefs can also choose to go out on other emergency calls at their own discretion. When a battalion chief is on the scene of an emergency, the battalion chief takes control of the scene and calls command. The battalion chief announces himself and directs personnel on the functions that need to be done. The battalion chief can make the decision to release apparatus and personnel. They also make the decision on when to call the chief or fire marshal and when to release the scene. However, when the battalion chiefs have not responded, the captains or lieutenants can be on call and make those same types of decisions.

Both the chief and the battalion chiefs play a role in staffing assignments. The chief determines the minimum standard for each station. The chief also tells the battalion chiefs how many people are available for the shift for the day, how to staff those units, and whether a substation will be closed for the day.

The battalion chiefs create the daily roster schedule. If the battalion chief is unavailable, the captain would create this daily roster schedule. When creating the daily roster, the battalion chiefs have to determine where to schedule the employees, what station to put them on, and what apparatus to put the employee on. The chief has no input on the schedule and does not check it. The battalion chief has to schedule the employees within the confines of the collective bargaining agreement as employees are able to bid on positions. One battalion chief described the daily roster as a logarithm for determining whom is assigned to a particular position. That battalion chief testified that they put paramedics where needed and then try to cover the areas they might be assigned. Then battalion chiefs can move around firefighters to fill slots where employees may be off on vacation, holidays or sick leave. When scheduling, the battalion chiefs must account for the employees' skill sets, trainings, and certifications. Ultimately, the battalion chiefs are responsible for placing personnel in positions where they will be successful and safe.

The chief testified the battalion chiefs are able to hire back personnel when people are sick. The chief stated that battalion chiefs can and have held over personnel without conferring with the chief even if the department is already at minimum staffing levels. The battalion chief would need a good reason for the increased staffing level, but could make that decision without conferring with the chief. In one instance, a battalion chief held over personnel when a couple of people went home sick and the battalion chief was concerned about a potential foodborne illness.

The battalion chiefs also play a role in discipline. Any officer within the department can give an employee a verbal warning. A battalion chief or the chief could issue a written warning. The chief would need to sign off on any suspension. The chief stated that he has never reversed or failed to sustain someone's recommendation of discipline although he may change wording or give direction on what is said. In one particular instance the battalion chief issued a written warning and the chief signed off on it afterwards. In another instance, the chief and a battalion chief consulted about a potential suspension, the chief signed off on it, and the battalion chief met with the individual and the union without the chief present. Battalion chiefs do not, however, play a role in grievances as grievances go to the chief at the first step of the grievance process.

### *1.2.2 Battalion Chiefs' Administrative Duties*

In addition to their operational duties, battalion chiefs also serve an administrative role dictated by their shift assignment.

#### *1.2.2.1 Battalion Chief, Shift A*

The battalion chief on Shift A is also the community outreach chief or the public information officer. This person handles media relations and public education programs with limited authority or oversight from the chief.

#### *1.2.2.2 Battalion Chief, Shift B*

The battalion chief on Shift B is in charge of training. He coordinates with the training lieutenant to set a training schedule for the year. They present the program to the chief at the beginning of the year. The chief rarely makes changes

in training once it is presented to him. He reviews it and signs off on the training schedule.

#### 1.2.2.3 Battalion Chief, Shift C

The battalion chief on Shift C handles some human resources functions as well as tasks related to the department's standard operating guidelines (SOGs). This battalion chief takes care of the promotional process and hiring process and works with human resources to make sure the promotional lists are current. He selects tests for promotional exams for engineers, lieutenants, captains, and the fire marshal and also selects the recruiting exams. The chief approves the tests. The chief is ultimately in charge of who is hired. He receives input regarding whom to hire, but it is ultimately his decision.

The battalion chief on Shift C also assists with the department's SOGs. After an SOG is drafted, the chief could make changes, but rarely does and then the draft SOG is distributed to the department for a ten-day review. The battalion chief on Shift C has worked on multiple SOGs. For example, the battalion chief worked with the fire marshal on changing the burn ordinance after the City Attorney asked the fire department to look into it. The battalion chief also thought the department needed an SOG for rehab of personnel. The chief did not make any changes to the proposed SOG, and he approved it. After a suggestion from the representative of the existing fire department union, the battalion chief also worked on an SOG for a peer support program. The battalion chief presented it to the chief, he made no changes, and approved and implemented it. The chief does have the ultimate authority to authorize the SOGs.

## **2. SUMMARY OF ARGUMENTS AND ISSUE**

AFSCME filed this unit determination petition to organize a unit of the three battalion chiefs in the Waterloo fire department. The City alleges the three battalion chiefs are not eligible to bargain as the battalion chiefs are managerial employees, meaning they are representatives of the public employer, and the battalion chiefs are supervisory employees. The City argues the battalion chiefs are managerial as they would have divided loyalty and a conflict of interest due to being so aligned with management. The City claims the battalion chiefs are supervisory employees as they assign firefighters and other officers and direct the work of subordinates. The City also claims the battalion chiefs effectively recommend discipline. AFSCME denies that the battalion chiefs are excluded from bargaining and claim the battalion chiefs are merely team leaders.

The issue in this case is whether the three battalion chiefs are excluded from collective bargaining and therefore ineligible to form a bargaining unit due to their managerial or supervisory status.

## **3. CONCLUSIONS OF LAW**

The City claims the battalion chief position is excluded by Iowa Code section 20.4(2). Iowa Code section 20.4(2) lists positions that are excluded from the provisions of chapter 20 and provides in relevant part:

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, first assistant, 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.

The Public Employment Relations Act (PERA) is written in broad terms to allow a large number of public employees to be eligible for coverage under its provisions. *City of Eagle Grove and Teamsters Local 238*, 12 PERB 8459, at 6; *City of Anamosa and Chauffeurs, Teamsters & Helpers Local 238*, 2020 ALJ 1022510, 102251, at 13. The Board, therefore, interprets Iowa Code section 20.4 exclusions narrowly to accomplish that objective. *City of Eagle Grove*, 12 PERB 8459, at 6. The party asserting the exclusion bears the burden of establishing the exclusion applies. *Id.* at 7.

### 3.1 Managerial Employee

First, the City asserts the battalion chiefs are managerial employees and are excluded from the provisions of chapter 20. Iowa Code section 20.4(2) does not specifically exclude managerial employees. PERB, following National Labor Relations Board (NLRB) and United States Supreme Court case law, has excluded certain employees as “representatives of the public employer” on the basis of the employee’s managerial status. *See Council Bluffs Cmty. Sch. Dist. and Comm’n Workers of America Local 7103*, 2003 PERB 6514, 6516, & 6536 at 21–22; *Cedar Rapids Cmty. Sch. Dist. and Service Employees Int’l Union, Local #199*, 2014 ALJ 8706 at 22. PERB follows the NLRB’s analysis in determining an employee’s managerial status. *Council Bluffs Cmty. Sch. Dist.*, 2003 PERB

6514, 6516, & 6536 at 21–22; *Cedar Rapids Cmty. Sch. Dist.*, 2014 ALJ 8706 at

22. To determine managerial status, PERB evaluates:

1. Whether the employee is so closely related to or aligned with management as to place the employee in a position of potential conflict of interest between his employer on one hand and his fellow workers on the other, and 2. Whether the employee is formulating, determining and effectuating his employer's policies or has discretion, independent of an employer's established policy, in the performance of his duties.

*Id.*

The managerial exclusion applies to employees at higher levels of the managerial structure who exercise discretion in formulating, determining, and effectuating employer policy. *City of Onawa and AFSCME Council 61*, 2012 ALJ 8505 at 18. Managerial status cannot be demonstrated merely by showing that an employee has some input in supervisory decisions. *Council Bluffs Cmty. Sch. Dist.*, 2003 PERB 6514, 6516 & 6536 at 34; *City of Onawa*, 2012 ALJ 8505 at 19. An employee must be significantly and not peripherally involved in the formulating, determining and effectuating the employer's policies and programs to be deemed a managerial employee that is a representative of the public employer. *Cedar Rapids Cmty. Sch. Dist.*, 2014 ALJ 8706 at 24. To determine managerial status, PERB looks at the employee's actual job duties and responsibilities on a case-by-case basis. *City of Perry and AFSCME Iowa Council 61*, 1990 HO 3888 at 23.

Based on the evidence in the record, the City has not shown the battalion chief position is managerial. The City claims the position is aligned with management and is in a position of a potential conflict of interest because the

battalion chiefs, as part of the command staff, meet with the chief during shift transitions and prior to staff meetings. The City also says they are closely aligned to management and have a potential conflict of interest due to their status as the position in charge of each of the respective shifts. The chief testified that at the meetings prior to the monthly staff meetings, he and the battalion chiefs discuss matters that may raise concerns with the current bargaining unit in the fire department. The City has provided some evidence that the battalion chiefs are so aligned with management that a conflict of interest could arise.

However, the City has not shown the battalion chiefs formulate, determine, and effectuate policy or have discretion, independent of the City or fire department's established policies, in the performance of their duties. The City argues the battalion chiefs' administrative responsibility demonstrate their independence in their duties and their policy-making. The evidence in the record is not robust enough to show this independence.

All the battalion chiefs have administrative responsibilities. One of the battalion chiefs is responsible for community outreach and acts as the public information officer. The chief says he has little oversight over this function. The testimony in the record contains little to no description of how the battalion chief on Shift A exercises the responsibility for community outreach and his public information officer duties. The record does not provide evidence of whether the battalion chief is independent in exercising this function or whether the battalion chief follows some established protocol when fulfilling this role. Without more

detail, I cannot determine whether the battalion chief exercises independence in this function.

The battalion chief on Shift B works with a lieutenant in establishing training for the fire department. The battalion chief presents the recommended training to the chief and the chief rarely makes changes before signing off on it. However, the chief has the ultimate responsibility for the determining what training is necessary. It is also unclear how large a role the battalion chief plays in determining the training schedule versus how large a role the lieutenant plays in determining the training schedule. Thus, the City has not demonstrated the battalion chief is acting independently or is more than peripherally involved in this task. Further, the City has not shown the battalion chief is formulating, determining, and effectuating policy in this role.

The battalion chief on Shift C has some responsibility for certain aspects of human resources and works on SOGs for the department. This battalion chief selects at least some of the promotional and hiring tests for the department, and the chief approves them. As the chief has to approve these tests, I cannot find the battalion chief has managerial status due to his role in formulating, determining, and effectuating policy when recommending promotional and hiring tests.

The Shift C battalion chief also works on SOGs, but the record does not contain any details about his role in the process. The battalion chief has brought an idea of a desired SOG, and requested to work on its creation. The battalion chief also has worked on drafting these SOGs with others in the department. All

the battalion chiefs would review the draft SOGs and provide input. However, the chief has final approval over the SOGs. Again, as the chief is approving these SOGs, I cannot find the battalion chief has managerial status due to his role in formulating, determining, and effectuating these SOGs. The record also does not contain sufficient information to conclude the battalion chief acts with the independence necessary to attain managerial status in the exercise of this function.

The City has not presented the evidence necessary to show the battalion chiefs formulate, determine, or effectuate policy or have the discretion, independent of the City or department's established policy in the performance of their duties. Thus, the City has not shown the battalion chiefs are excluded from collective bargaining as representatives of the public employer due to their managerial status.

### 3.2 Supervisory Employee

Next, the City argues the battalion chiefs are excluded from the bargaining unit as "supervisory employees" pursuant to Iowa Code section 20.4(2). The City claims the battalion chiefs are supervisory as the battalion chiefs assign and direct subordinate employees, and discipline or effectively recommend discipline of other employees.

As previously stated, PERA is written in broad terms to allow a large number of employees to be eligible for coverage under its provisions. Therefore, the Board interprets exclusions from the Act narrowly. *City of Eagle Grove*, 12 PERB 8459 at 6; *City of Anamosa*, 2020 ALJ 102250 & 102251 at 13. The party

asserting the exclusion bears the burden of establishing the exclusion applies. *City of Eagle Grove*, 12 PERB 8459 at 7; *City of Anamosa*, 2020 ALJ 102250, 102251 at 13.

The Act separates supervisors from the rest of the employees and excludes them from the right to collectively bargain “in order to preserve their unqualified loyalty to the interests of their employers, and to prevent the dilution of this loyalty by giving them common interest with the men they were hired to supervise and direct.” *City of Davenport v. Public Emp’t Relations Bd.*, 264 N.W.2d 307, 313 (Iowa 1978). However, supervisory status cannot be construed so broadly that persons are denied rights which PERA was designed to protect. *Id.* The determination of an employee’s supervisory status is ordinarily a fact question that requires 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.” *Id.*; *City of Anamosa*, 2020 ALJ 102250 & 102251 at 18.

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

any individual having authority in the interest of the public employer to hire, transfer, suspend, 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.

The enumerated functions of a supervisor in the definition are listed disjunctively, meaning that if an employee possesses any of the functions, it is sufficient to classify the employee as a supervisor. *City of Davenport*, 264 N.W.2d

at 314; *City of Eagle Grove*, 12 PERB 8459 at 13. However, the employee must exercise the functions in reality, not just on paper. *City of Davenport*, 264 N.W.2d at 314; *City of Eagle Grove*, 12 PERB 8459 at 13; *City of Anamosa*, 2020 ALJ 102250 & 102251 at 18. The statute requires evidence of actual supervisory authority translated into “tangible examples.” *City of Davenport*, 264 N.W.2d at 314; *City of Eagle Grove*, 12 PERB 8459 at 13; *City of Anamosa*, 2020 ALJ 102250 & 102251 at 18.

The statute requires that to qualify as a supervisor, the employee (1) has 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 Eagle Grove*, 12 PERB 8459 at 13 (internal citations omitted). These four requirements are conjunctive requirements, meaning the employee must have all of the above in the exercise of an enumerated supervisory function to meet the definition of supervisor. *City of Davenport*, 264 N.W.2d at 314. To demonstrate an employee is supervisory, a party must show the employee, by virtue of the responsibilities of the position, is substantially aligned with management. *City of Davenport*, 264 N.W.2d at 314; *City of Anamosa*, 2020 ALJ 102250 & 102251 at 19.

Additionally, authority to perform one of the enumerated functions is not supervisory if the responsibility is routine or clerical as that means the employee is not exercising independent judgment. *City of Davenport*, 264 N.W.2d at 314; *City of Anamosa*, 2020 ALJ 102250 & 102251, at 18-19. Repetitive or rote tasks are not considered supervisory. *City of Davenport*, 264 N.W.2d at 314. An

employee who serves merely as a conduit acts routinely and is not supervisory.  
*Id.*

The employee must have the power of the enumerated functions listed in the statute or have the power to effectively recommend the exercise of the listed functions. *Id.* at 314. Effective recommendation means a recommendation which under normal policy is made at the chief executive level or below and is adopted by a higher authority without independent review or de novo consideration as a matter of course. *City of Eagle Grove*, 12 PERB 8459 at 14. If an employee is able to effectively recommend action regarding one of the enumerated functions listed in the statute, that effective recommendation is also enough to exclude the position as supervisory. *City of Eagle Grove*, 12 PERB 8459 at 14; *City of Anamosa*, 2020 ALJ 102250 & 102251 at 19.

An employee's title carries little weight in determining whether the position is supervisory. *City of Davenport*, 264 N.W.2d at 314. An employee's regular functions and responsibilities are determinative of the employee's supervisory status. *Id.* at 315; *City of Eagle Grove*, 12 PERB 8459 at 13. Documented authority, such as a job description, is insufficient without evidence of the exercise of the alleged supervisory authority. *Cedar Rapids Cmty. Sch. Dist. and Service Employees Int'l Union, Local #199*, 2014 ALJ 8706 at 15. Evidence showing actual exercise of alleged supervisory authority is particularly relevant to the determination of whether the authority exists, and the absence of such evidence may preclude a finding of supervisory status even when the job description appears to bestow the authority on the employee. *City of Des Moines*



*and Des Moines Gold Braid Org.*, 2009 PERB 7933 at App. 66–67. However, the existence of the supervisory power, rather than the exercise of the power is determinative. *Id.* at 5. So when an employee’s authority to exercise a certain function is unquestioned, the authority itself rather than a showing of tangible examples can determine an employee’s supervisory status. *Id.*

### 3.2.1 *Assign and Direct*

The City first claims the Waterloo battalion chiefs are supervisory as they assign and direct subordinates. The responsibility to direct subordinates must be substantial and pervasive enough to make an employee part of management to be deemed supervisory. *Cedar Rapids Cmty. Sch. Dist.*, 2014 ALJ 8706 at 19–20. Directing and assigning 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 professional knowledge. *Id.* at 15. The responsibility to direct requires evidence that the supervisor is both responsible and accountable for the actions of the subordinates. *City of Des Moines*, 2009 PERB 7933 at 6.

Battalion chiefs are responsible for scheduling of employees within certain limitations. The chief determines the minimum standard of employees, tells the battalion chiefs how many people are available for a shift, and whether certain stations need to be closed. However, the battalion chiefs assign personnel when completing the daily rosters, and they do so without the chief’s approval or review. The battalion chiefs take into account the experience of the employees and the potential skill set or training of the employees. The battalion chiefs have

to abide by minimum staffing guidelines and the provisions in the collective bargaining agreement, but then still have firefighters that can be moved around to fill other slots. One of the battalion chiefs referred to the daily logs like a logarithm, but he also stated he is responsible for moving firefighters around to fill positions where others were off on vacations, holidays, or sick leave.

Battalion chiefs also have the authority to hire back personnel or hold over personnel when necessary and without conferring or gaining approval from the chief. In one particular situation, a battalion chief did hold over personnel above the minimum staffing levels without conferring with the chief ahead of time or gaining approval for this action.

The battalion chiefs have the authority to assign personnel when completing the daily roster and ensuring the necessary coverage for shifts by potentially holding over employees. *See City of Sioux City and Sioux City Policemen's Ass'n*, 2011 HO 8197 at 19–20 (determining lieutenants were supervisory as they used independent judgment in the assignments made at the beginning and throughout the shift, and exercised this function without guidance or direction or approval from a higher authority). The battalion chiefs use independent judgment in making the schedule and determining appropriate staffing in various situations. The battalion chiefs do this without answering to a higher authority.

AFSCME claims the captains also perform some of these assignment functions as they fill in for the battalion chiefs. The evidence demonstrates the battalion chiefs oversee the shifts and complete the daily roster on a regular

basis, and the captains fill in for the battalion chiefs when needed. Although the captains may fill in for the battalion chiefs and assign other employees on a temporary basis, this temporary responsibility is not determinative of the captains' supervisory status, nor does it negate the battalion chiefs' supervisory status since they perform this function on a regular basis. *See City of Davenport*, 264 N.W.2d 313, 318 (stating supervisory status is conferred based on an employee's regular functions and responsibilities and temporary or occasional supervisory status does not disqualify an employee from PERA's provisions).

The City has demonstrated the battalion chiefs are supervisory when exercising the function of assigning other public employees.

### 3.2.2 *Discipline*

The City also contends the battalion chiefs are supervisory based on their authority to discipline other employees or the authority to effectively recommend discipline.

To find an employee is supervisory based on the authority to discipline, that employee must have more authority than merely the power to issue verbal reprimands or coaching and counseling. *See City of Des Moines*, 2009 PERB 7933 at App. 73. PERB and Iowa courts have found NLRB case law instructive in determining supervisory status based on an employee's authority to discipline. *See City of Davenport*, 264 N.W.2d 307 at 321. NLRB case law has further analyzed the authority necessary to find an employee a supervisor based on the authority to discipline. The NLRB has determined that to classify an employee as supervisory under the National Labor Relations Act, the employee must have

the authority to issue a warning that automatically or routinely leads to job-affecting discipline by operation of a defined progressive disciplinary system. *Republican Co. and Springfield Newspaper Emps. Ass'n, Inc.*, 361 NLRB 93, 99, 2014 WL 3887221, at \*11 (August 7, 2014) (determining an electrical manager was not supervisory based on the authority to issue verbal warnings when the employer had a progressive discipline system, but there was no evidence related to the role of verbal warnings in the system); see *Colonial Manor 1977, Inc. and 1115 Nursing Home and Hospital Emps.*, 267 NLRB 525, 526–527, 114 L.R.R.M. 1093, 1983 WL 24814, at \*2–3 (August 26, 1983) (determining that LPNs were supervisors when issuing written warnings independent of higher authority as written warnings were not merely minor discipline). The employer bears the burden of proving such a system and the role that warnings would play in the progressive discipline system. *Republican Co.*, 361 NLRB 93, 99–100, 2014 WL 3887221, at \*11.

In this case, any officer in the fire department can issue a verbal warning, battalion chiefs can issue written warnings, and the chief can issue suspensions or other discipline. Based on the record, the battalion chiefs' authority to independently issue written warnings is not enough to determine they are supervisors. The record does not contain any evidence about whether written warnings are serious and could automatically or routinely lead to job-affecting discipline.

The City also argues that battalion chiefs effectively recommend discipline. To effectively recommend discipline, a decision needs to be made at the chief

executive level or below and be adopted by a higher authority without independent review or de novo consideration as a matter of course. *City of Des Moines*, 2009 PERB 7933 at App. 69–70. The evidence in the record demonstrates that battalion chiefs provide recommendations of suspensions and the chief needs to sign off on it at some point. The chief testified he does not recall a time where he has changed a discipline, but he does give suggestions on wording. In one particular example, the battalion chief consulted with the chief prior to issuing a suspension, but the battalion chief met with the employee without the chief to issue the suspension. Based on the record, I cannot determine the battalion chiefs effectively recommend discipline. The chief does review the discipline recommendations and changes wording. The chief consults with the battalion chiefs about the discipline recommendations. The chief also has to sign off on suspensions. These facts demonstrate the chief does have the final authority and he does conduct some sort of independent review even if he does not reverse or fail to sustain a recommendation. The chief's role in the discipline process extends beyond merely signing off on the recommended discipline. As such, the City has failed to demonstrate the battalion chiefs are supervisory based on their authority to effectively recommend discipline.

### 3.3 Conclusion

The City has shown the battalion chiefs are supervisory based on their authority to assign other employees. As such, the battalion chiefs are excluded from the provisions of Iowa Code chapter 20 and are not appropriate to include in a bargaining unit.

ORDER

AFSCME's petition to determine the unit is dismissed.

This proposed decision will become PERB's final decision on the unit determination petition in accordance with PERB rule 621—9.1(20) 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 20th day of April, 2022.

/s/ Amber DeSmet

Administrative Law Judge