

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF:)
)
MUSCATINE COUNTY,)
Public Employer,)
)
and)
)
AFSCME/IOWA COUNCIL 61,)
Petitioner.)

CASE NO. 8396

MUSCATINE COUNTY,)
Public Employer/Petitioner,)
)
and)
)
CHAUFFEURS, TEAMSTERS AND)
HELPERS, LOCAL 238,)
Certified Employee Organization.)

CASE NO. 8404

PROPOSED DECISION AND ORDER

In Case No. 8396, AFSCME/Iowa Council 61 filed a combined bargaining unit determination/representative certification petition and proposes a bargaining unit of food service workers, nurses, and clerical employees employed by Muscatine County at its sheriff's department jail. Subsequently, in Case No. 8404, Muscatine County filed a petition to amend the food service workers, nurses, and clerical employees into an existing bargaining unit of its correctional officers who also work at the jail. The Chauffeurs, Teamsters and Helpers, Local 238 (Teamsters), represents the bargaining unit of correctional officers.

By order, dated July 8, 2011, the Public Employment Relations Board (PERB or Board) consolidated the two petitions for hearing, which was held on August 9, 2011. Attorney James Hanks appeared for the County, Attorney Mark Hedberg for AFSCME, and Attorney Jill Hartley for the Teamsters. Pursuant to Iowa Code section 17A.14(4), official notice was taken of the original PERB certification for the correctional officers' bargaining unit and all subsequent amendments to the certification and bargaining unit description. At hearing, the parties stipulated that the food service workers, nurses, clerical employees, and commissary manager are bargaining-eligible and the food service manager is not bargaining-eligible for what is ultimately determined to be the appropriate unit for their placement. All three parties filed post-hearing briefs.

FINDINGS OF FACT

There are 215 county employees with four bargaining units of organized employees: (1) road department employees, (2) deputies, and (3) correctional officers represented by the Teamsters, and (4) assistant attorneys represented by the Muscatine County Prosecutors Association (Association). In 1994, PERB established the bargaining unit of correctional officers employed by the sheriff's department, as stipulated to by the parties, and certified the Teamsters to represent it. In 2005, pursuant to the County and Teamster's stipulation, the bargaining unit was amended to include "Cooks and all other kitchen staff employed by the Muscatine County Sheriff's Department." In 2010, the unit was amended again with the parties' stipulation, this time to exclude the cooks

and all other kitchen staff from the unit. The unit, as last amended and described in PERB Case No. 8202, is as follows:

INCLUDED: All regular full-time and part-time Correctional Officers.

EXCLUDED: All supervisory and clerical employees, [c]ooks and all other kitchen staff and all others excluded by Iowa Code section 20.4.

The sheriff and chief deputy are in command of the sheriff's department with its operations split between two divisions, patrol and the jail. There are approximately 100 sheriff department employees, 25 who work patrol, including deputies, and the remaining 75 who work at the jail, including the food service workers, nurses, clerical employees, the commissary manager, and the correctional officers. The jail administrator and an assistant jail administrator supervise the overall operations of the jail, which has a secured side where the inmates are housed and an unsecured side that inmates do not occupy.

Three full-time and two part-time food service workers work in the jail's secured area (Exh. 1). They prepare meals for the inmates, oversee the kitchen's daily activities, and supervise inmates who work in the kitchen. These workers must maintain a level of food certification and wear county-provided smocks. The food service workers have staggered shifts, an early one and late one, to cover the kitchen 5 a.m. to 8 p.m., seven days a week. They report to the food service manager.

There are three jail nurses: two are part-time LPNs and one is a RN (Exh. 4-5). The RN works a traditional 40-hour week, Monday through Friday,

and is responsible for operations of the medical department, ensuring that inmate assessments and intakes, and the ordering and dispensing of medicine are in accordance with state law. The LPNs work evenings and weekends. They assist in dispensing medicine, perform assessments of inmates, and handle inmate sick calls. The three nurses work on the jail's secured side with generally one on duty at a time. The nurses must attend training to maintain their licensure. All three report to the jail administrator.

There are three clerical workers who work in the jail's unsecured side: a receptionist (Exh. 7), an office manager/records clerk (Exh. 6), and a bookkeeper (Exh. 8). The first is the receptionist who sits at the front window and assists citizens and attorneys, answers the telephone, and assists correctional officers with inmate phone cards and indigent requests. The receptionist works six-hour days Monday through Thursday and eight hours on Friday. The second position is the office manager/records clerk whose primary function is to maintain inmate jail records. The office manager/records clerk assists correctional officers, citizens, and attorneys with records, maintains phone cards and indigent requests, and sits at the front window in the receptionist's absence. The third, the bookkeeper, is responsible for all payroll and billings and tracking budget-line items for the sheriff, chief deputy and the jail administrator. Both the office manager/records clerk and bookkeeper work standard 40-hour workweeks. All three clerical employees are allowed to wear civilian clothing or polos with the sheriff's logo. The three positions report to the assistant jail administrator.

The commissary manager is responsible for inventory, processing inmate commissary requests, and supervising inmate workers (Exh. 2). The food service manager supervises the food service workers and directs operations of the kitchen (Exh. 3). The commissary manager and the food service manager report to the jail administrator.

There are 30 full-time and 12 part-time correctional officers who work in the jail's secured side. They manage the daily activities of the inmates and escort or otherwise provide security when the nurses, food service workers, or commissary manager, and occasionally clerical employees, perform certain duties for the inmates. The officers must be certified by the Iowa Law Enforcement Academy and attend annual certification training. They can use lethal force and may receive training to carry a taser or other weapon. The officers wear uniforms and carry equipment such as a flashlight and radio. There are three shifts per day: 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7 a.m., seven days a week. The correctional officers are the only jail employees with an 11/7 shift for which they receive preferential pay. The full-time correctional officers work 40-hour weeks and the part-time officers work 31.9 hours a week. The jail maintains minimum staffing levels for the officers. They are structured in a paramilitary fashion with corporals, sergeants, and lieutenants as the higher ranking officers. Corporals are in the bargaining unit of correctional officers. A sergeant and a lieutenant supervise each shift of correctional officers. In the absence of the jail administrator or assistant jail administrator, other jail employees may report to the sergeant or lieutenant

who is shift supervisor. None of the other jail employees has transferred to a correctional officer position.

The jail's standard operating procedures (SOP) are found in its handbook, "Muscatine County Jail Policy and Procedure" (Exh. 11), which addresses operating procedures, performance expectations, and conduct expectations for all jail employees with some exceptions. The same standards of conduct, protocol for infractions, and levels of disciplinary action apply to all employees regardless of their position or supervision.

The sheriff's department non-contract employees receive the same benefits offered to all other county employees, including health and life insurances, sick leave, and vacations. The County Board sets their salaries. For the county employees in the four bargaining units, the County negotiates contracts with the Teamsters and the Association for the employees' salaries and benefits. The County makes every attempt to keep the wage increases the same over the years for contract and non-contract employees.

The County's director of administrative services negotiates and administers the four bargaining unit contracts. The County anticipates the need to hire another person to assist if there is an additional bargaining unit of employees as proposed by AFSCME.

AFSCME held several meetings with the proposed unit of food service workers, nurses, and clerical employees after being contacted by one such employee. All but one of the AFSCME proposed-unit of employees signed "dual-purpose" cards in support of organization and AFSCME representation.

These employees do not believe they share a community of interest with the correctional officers and do not wish to be included in the correctional officer unit. They would rather remain unorganized if they are not in a separate unit. Previously, the cooks had requested exclusion from the correctional officer unit because they believed, that on items of interest to them, they were out-voted by the officers. The unit of correctional officers supports the separate unit of food service workers, nurses, clerical employees, and commissary manager, proposed by AFSCME.

CONCLUSIONS OF LAW

AFSCME's petition, in Case No. 8396, seeks PERB's determination of an appropriate bargaining unit of county jail employees and proposes that food service workers, nurses, clerical employees, and the commissary manager constitute an appropriate unit. In Case No. 8404, the County's petition alleges that the food service workers, nurses, clerical employees, and commissary manager should be amended into the existing unit of correctional officers.

In determining the appropriate unit, Section 20.13(2) provides, in relevant part:

. . . 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.

The analysis of section 20.13(2) is done on a case-by-case basis with consistency in reasoning and weighing of factors leading to a unit determination tailored to fit the particular facts of each case. *Anthon-Oto Cmty.*

Sch. Dist. v. PERB, 404 N.W.2d 140, 144 (Iowa 1987). Although all factors must be considered, weight is given to those factors deemed most relevant under the circumstances of each case. *Dubuque Cmty. Sch. Dist. v. PERB*, 424 N.W.2d 427, 431 (Iowa 1988); *Anthon-Oto Cmty. Sch. Dist.*, 404 N.W.2d at 143.

In this case, consideration of these factors, with weight to those deemed most relevant, lead to the determination that an appropriate unit is a separate unit of the jail's food service workers, nurses, clerical employees, and the commissary manager, as proposed by AFSCME.

“Recommendations of the Parties” and “Geographical Location”

The section 20.13(2) factors, “recommendations of the parties” and “geographical location,” have little bearing in this case. The “recommendations of the parties involved” is of no import because the parties disagree as to the appropriate unit. See, *English Valleys Cmty. Sch. Dist.*, 98 PERB 5739 at 9. When the parties are in agreement as to the appropriate unit, the Board will generally give controlling weight to this factor and likely approve any such stipulated agreement as long as the composition of the agreed-upon unit is not plainly repugnant or inimical to the statute. *City of West Des Moines*, 10 PERB 8043 at 11; *City of West Des Moines*, 95 PERB 5158 at 12; *Spencer Municipal Hospital*, 94 PERB 4749 & 4799 at 12. No such agreement exists here.

With regard to “geographical location,” the jail facility is the central work location for all the employees. The same geographical distribution of employees would exist regardless of whether the jail employees at issue are in a separate unit or are amended into the unit of correctional officers. See, e.g., *City of West*

Des Moines, 10 PERB 8043 at 12; *Des Moines Police Gold Braid Org.*, 09 PERB 7933 at 96-97. Thus, “geographical location” weighs equally for both of the proposed units and is insignificant in any event.

“Efficient Administration of Government”

All parties cite “efficient administration of government” as support for their respective positions on the appropriate unit composition. While the County’s argument on efficiencies of one unit is compelling, it is not persuasive. The overall analysis of this factor weighs in favor of the AFSCME-proposed unit. The Board has consistently held that the “efficient administration of government” factor requires the designation of fewest units as possible consistent with the employees’ rights to form organizations of their own choosing to represent them in a meaningful and effective manner. *Anthon-Oto Cmty. Sch. Dist.*, 404 N.W.2d at 143; *City of West Des Moines*, 10 PERB 8043 at 12; *City of Lake Mills*, 96 PERB 5499 at 6; *Des Moines Indep. Cmty. Sch. Dist.*, 75 PERB 21, 125, & 126 at 9. Thus, the analysis of this factor “involves a balancing of sorts, where the employer’s interest in the efficiencies offered by fewer units is weighed against the employee’s interest in self-determination.” *City of West Des Moines*, 10 PERB 8043 at 12; *Des Moines Police Gold Braid Org.*, 09 PERB 7933 at 97. It is this required balancing in the overall analysis of this factor that weighs in favor of the AFSCME-proposed separate unit.

As the County asserts, its all-inclusive unit would seem to further administrative efficiencies for the County in comparison to the addition of the

separate unit proposed by AFSCME. The County would be required to negotiate and administer an additional contract for this separate unit. The time and effort may be a burden for a small employer that does not have a personnel office. However, the County's contention that one more unit would require the hiring of an additional person to assist in negotiations and contract administration is not persuasive. Under the County's proposed unit, the County would still have to spend time and effort negotiating and administering contract wages and benefits for these employees albeit under the same contract as the correctional officers

Moreover, the inquiry does not end with the determination that produces the fewest units and least expenditure of resources, but must be balanced with the employees' right to self-determination. This consideration weighs in favor of the AFSCME-proposed unit when, in this case, the employees have indicated their interest to be in a separate unit represented by AFSCME. After the cooks were amended out of the correctional officers' unit, the food service workers, nurses, and clerical employees sought out, met with AFSCME and all but one signed authorization cards in support of organization and representation by AFSCME. They have indicated that they would rather be unorganized and without protected rights under chapter 20 than be amended into the unit of correctional officers and represented by the Teamsters. The Teamsters, on behalf of the correctional officers, supports the placement of the other jail employees in a separate unit represented by AFSCME. The employees' stated interest and lack of support for the one inclusive unit favors the separate unit

for these employees. *See, e.g., City of Lake Mills*, 96 PERB 5499 at 8. Balancing the employees' strong desire to be in a separate unit represented by AFSCME with the County's proposed unit that produces the fewest units, the "efficiency of administration of government" factor weighs in favor of the AFSCME-proposed unit.

"Community of Interest"

The "community of interest" factor is significant and supports the separate unit proposed by AFSCME. The analysis of community of interest requires the determination of the existence of similarities of the relevant positions for appropriate unit placement. *See, e.g., Anthon-Oto Cmty. Sch. Dist.*, 404 N.W.2d at 143. The Board has held that this requires the examination of such factors as duties, skills, training and qualifications, methods of compensation, benefits, hours of work, common supervision, employee contact with other employees, and transfers among the classifications or positions to be included in the bargaining unit, and existence or absence of common personnel policies. *See, e.g., Dubuque Cmty. Sch. Dist.*, 424 N.W.2d at 431; *City of West Des Moines*, 10 PERB 8043 at 14; *State of Iowa (Regents)*, 98 PERB 5834 at 14; *City of Lake Mills*, 96 PERB 5499 at 5-6; *Des Moines Indep. Cmty. Sch. Dist.*, 84 PERB 2498 at 8-9; *Des Moines Indep. Cmty. Sch. Dist.*, 75 PERB 21, 125 & 126 at 9-10.

As the County correctly asserts, there are many common factors between the correctional officers and the food service workers, nurses, clerical employees, and the commissary manager. All of these employees perform

duties that serve the common mission of housing of inmates at the County jail and, ultimately, all are accountable to the jail administrator. All are subject to the same county policies and the jail's policies and procedures. Through the County's efforts, they receive the same benefits. Additionally, they have more contact with one another than they do with the deputies who work in a separate building. While these similarities may be sufficient to find a community of interest and conceivably include all the jail employees in one unit, the totality of community of interest factors does not warrant such a result. *See, e.g., City of West Des Moines*, 10 PERB 8043 at 16. As the Board held in *City of West Des Moines*:

Application of community of interest factors would strongly support separate bargaining units for these groups of employees, since the members of the separate units would share even more similarities with one another . . . than would the members of a combined unit.

Id. At 17. *See, e.g., City of West Des Moines*, 95 PERB 5158 at 13-14 (community of interest factors did not support one unit of volunteer and career fire fighters).

Pivotal is the fact that correctional officers are certified in law enforcement and provide security whereas the other employees tend to the day-to-day requirements of the inmates by providing meals to the inmates, filling their commissary requests, administering to their medical care, maintaining their records, or assisting their jail visitors. The correctional officers have a paramilitary hierarchy with supervision by ranking officers. The correctional officers wear uniforms, can use lethal force, and may carry weapons. The

correctional officers are the only jail employees who have minimum staffing levels, work an 11/7 shift with preferential pay, and perform their duties 24 hours/7 days a week. Their duties, skills, training and qualifications, hours, and supervision are significantly different than other jail employees.

As cited by the County, there are a number of PERB cases with determinations that place sworn officers in bargaining units with civilian employees. Here, however, there was evidence indicating that the cooks believed that the interests were divergent to the extent that it inhibited meaningful bargaining for them and caused them to leave the correctional officer unit. The commonalities of the correctional officers and the other bargaining-eligible employees are sufficiently distinct to justify a separate unit for the food service workers, nurses, clerical employees, and the commissary manager. The stronger community of interest exists in a separate unit and weighs in favor of the AFSCME-proposed unit as appropriate.

“History and Extent of Organization”

The last listed factor, “history and extent of organization,” supports the separate unit proposed by AFSCME. The latter part, “extent of organization,” requires consideration be given to the group of employees on which the union has focused its organizing efforts. *City of West Des Moines*, 10 PERB 8043 at 19; *State of Iowa (Regents)*, 98 PERB 5834 at 15; *Spencer Municipal Hospital*, 94 PERB 4749 & 4799 at 19. The extent of organizing is not controlling and will only be given weight in favoring a unit determination if that unit is supported by other section 20.13(2) factors. *Oskaloosa Assoc. of Prof. Fire*

Fighters, Local 636, 97 PERB 5653 at 9-10; *Spencer Municipal Hospital*, 94 PERB 4749 & 4799 at 19-20.

In this case, the County has four bargaining units of organized employees – road workers, deputies, and correctional officers represented by the Teamsters, and prosecutors represented by the Association. In 2005, the food service workers (formerly cooks) were once amended into the correctional officers unit and, thereafter in 2010, amended out of the unit. The historical affiliation of the food service workers is insignificant given the recent organizing efforts of AFSCME. AFSCME held several meetings to organize the food service workers, nurses, and clerical employees and received the Teamsters' support on behalf of the correctional officers. Subsequently, AFSCME filed its petition for a bargaining unit determination and proposed a distinct unit comprised of the food service workers, nurses, clerical employees, and the commissary manager on which it had focused its organizing efforts. Given AFSCME's organizing focus and organizing efforts, the history and extent of organization support the AFSCME-proposed unit.

Having considered all of the section 20.13(2) factors based on the record and having given greatest weight to the principles of efficient administration of government, community of interest, and history and extent of organization, a separate unit, as proposed by AFSCME, and comprised of the food service workers, nurses, clerical employees, and the commissary manager is appropriate. Consequently, I propose the following:

ORDER

Case No. 8404: The petition for amendment of bargaining unit filed by Muscatine County is DISMISSED.

Case No. 8396: In accordance with Iowa Code section 20.13, the following constitutes an appropriate bargaining unit of employees for the Muscatine County Sheriff's Department:

INCLUDED: Food service workers, nurses, clerical employees, and commissary manager.

EXCLUDED: Correctional officers, supervisory employees, and all others excluded by Iowa Code section 20.4.

This proposed decision will become PERB's final decision on the bargaining unit determination portion of the combined petition herein in accordance with 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.

Having determined that the showing of employee interest submitted by AFSCME fulfills the requirements of the statute:

IT IS ORDERED that an employee representation certification election be conducted, at a time and place to be determined by the Board. Eligible to vote are all employees in the above-described unit who were employed during the payroll period immediately preceding the date the proposed unit determination portion becomes final and who are also employed on the date of the election.

IT IS FURTHER ORDERED that the Public Employer submit to the Board, within seven days from the date the proposed unit determination

described above becomes final, an alphabetical list of the names, addresses, and job classifications of all eligible employees in the bargaining unit described above.

DATED at Des Moines, Iowa, this 15th day of January, 2013.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
Diana S. Machir
Administrative Law Judge

Original filed.

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