

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:  
  
CITY OF ONAWA,  
Public Employer,  
  
and  
  
AFSCME COUNCIL 61,  
Petitioner.

CASE NO. 8505

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PROPOSED DECISION AND ORDER

On March 28, 2012, AFSCME Council 61 (AFSCME), filed a combined petition for unit determination and representative certification with PERB pursuant to Iowa Code sections 20.13 and 20.14 and PERB rules 621—4.1(20), 621—4.2(20), 621—4.3(20), and 621—4.4(20). In the petition, AFSCME requests PERB to determine an appropriate bargaining unit composed of certain employees of the City of Onawa (the City) and seeks to represent these employees for purposes of collective bargaining. A hearing on the petition was originally set for April 27, 2012 and then continued, by agreement of the parties, until May 4, 2012.

Prior to hearing, the parties stipulated that the following job classifications should be included in and excluded from the bargaining unit:

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

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

The parties dispute whether four positions should be included in or excluded from the bargaining unit: maintenance operations coordinator, water/sewer foreman, electric foreman, and cemetery sexton/street foreman.<sup>1</sup>

At hearing, Jack Lipovac represented the City and Steven Roth represented AFSCME. The parties submitted post-hearing briefs on June 6, 2012. Based on the entire record and arguments presented by the parties, I make the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

The City has a mayor and council form of government and employs a City administrator. The council's powers include "mak[ing] decisions on employment and termination of all City employees." Onawa City Code 23.07(6). The personnel policy handbook provides that the City council "will have the entire authority to hire, promote, dismiss, or reduce any and all full-time and or part-time employees of the City of Onawa."

The City administrator is Larry Burks. His duties include "supervis[ing] and direct[ing] through established procedures, all officers, departments and employees of the City and central administration," and "supervis[ing] . . . all City departments in the preparation of, administration and operation of the City's annual budget." Onawa City Code 23.06(9), (14). The City administrator also

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<sup>1</sup> The parties seem to agree on the job title "maintenance operations coordinator" for one job classification in dispute but the parties disagree on the job titles for the remaining three positions at issue. AFSCME describes these employees as "foremen" and the City describes them as "superintendents." I am referring to these positions as "foremen" because that is how they are termed in exhibit 1, a listing of City employees and job titles jointly submitted by the parties.

shall recommend to the [c]ouncil action regarding appointed officers or employees of the City and shall also recommend to and seek direction from the [c]ouncil when the [a]dministrator and a department head are not in agreement in regard to the employment, reclassification, suspension, discipline, or discharge of a City employee.

Onawa City Code 23.06(24). At hearing Burks explained that his job involves a lot of planning and organizing. He works on zoning and nuisance issues and prepares information for the City council. He is involved in helping make policy decisions for the City and does not have daily involvement in the City's water, electric, or street departments.

The City council uses separate hiring and personnel committees to assist with employment decisions. The hiring committee is composed of the mayor, two council members, the city administrator, the maintenance operations coordinator and the foremen from the water/sewer and electric departments. The committee members review the applications and interview the candidates together. The members score and discuss the applicants and the committee makes a recommendation to the council for its final hiring determination. Although the committee forms a recommendation together, the department foremen have considerable influence in the process.

The personnel committee considers employment policies, transfer requests, promotion requests and wage issues including bonuses and cost of living adjustments. The personnel committee forms recommendations and the City council gives final approval on wage issues. The maintenance operations coordinator and the electric foreman are on the personnel committee but the record does not show who else, if anyone, is on this committee. Other

department foremen report issues and make recommendations on transfers and promotions to the personnel committee.

Prior to September 2010, the City employed a superintendent of utilities who oversaw five departments: streets, water/sewer, electrical, water/wastewater treatment, and fleet/building maintenance.<sup>2</sup> The superintendent of utilities was terminated in September 2010 and the City chose not to fill the vacancy. Instead, the City assigned the superintendent's responsibilities to various other positions. Roger Gries, a thirty-five year employee of the City and foreman of the water/wastewater treatment department, agreed to perform some of the duties. He now performs the administrative duties for the five departments previously handled by the superintendent. Other general oversight duties of the individual departments that were previously done by the superintendent have been assigned to each department's foreman.

The personnel policy handbook states that the City "holds annual performance evaluations and wage reviews for all employees" and that each

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<sup>2</sup> Two organizational charts were submitted as evidence. The organizational chart in the personnel policies handbook, submitted as a joint exhibit, shows that the "superintendent of utilities" oversaw the "assistant superintendent of utilities" and three departments (street, water/sewer, and electrical). It shows the "assistant superintendent of utilities" oversaw the water/wastewater treatment department and fleet/building maintenance departments. However, there was no testimony or other evidence showing that anyone performed the duties of "assistant superintendent of utilities" so it appears that the "superintendent of utilities" actually oversaw all of the departments. An updated organizational chart submitted by the City lists the "operations coordinator" in the "superintendent of utilities" position and eliminates the "assistant superintendent" position. It lists the "operations coordinator" as overseeing four departments: street, water/sewer, electrical, and water/wastewater treatment. The fleet/building maintenance department is listed as being overseen by, or within, the water/wastewater treatment department. But it is unclear when this organizational chart was made and whether it actually reflects the City's operating hierarchy. I base my finding that the superintendent of utilities oversaw the five departments on an analysis of both charts and the testimony of the witnesses.

employee's supervisor performs the evaluations. The supervisor "complete[s] a written performance evaluation and discuss[es] the results of this evaluation with [the employee]" and "[i]f [the employee's] performance is unsatisfactory, [the] supervisor will make specific recommendations and suggestions for improvement and establish a time period for bringing [the employee's] performance up to standard." The department foremen complete evaluations for the employees within their department. The evaluations are kept as a part of the employee's records but the evaluations are not used in adjusting employees' wages.

The department foremen are also involved in the City's budget process and have some authority over finances for their departments. Each year the City administrator issues a budget call setting out the goals and constraints for the upcoming budget year. Each foreman prepares a draft budget for their department and discusses financial needs and expectations with the City administrator. The draft budget is then reviewed and potentially revised by the City administrator. The City administrator presents the budget recommendations to the City council which gives final budget approval. If the City council announces budget reductions, the foremen decide what areas of their budgets are cut and implement the reductions. If there is a surplus for a department, the foreman gets to decide how to spend the extra funds. The foremen also can move funds from one budget line item to another as needed. The foremen are responsible for budgeting for projects and making purchases for their departments. The foremen submit receipts of their purchases to the

City clerk. Any projects or expenditures over \$5,000 need City council approval. The foremen do not have payroll responsibilities.

The foremen are responsible for completing special projects within their departments that are approved by the City council. For example, the water/sewer foreman is in charge of a leak detection project and the street foreman is responsible for a drainage improvement project. Sometimes a department foreman presents project proposals directly to the City council and sometimes the City administrator will present the project on a foreman's behalf. The foremen decide when an outside contractor is needed for a specific project for their departments and handle the bidding process for contract work. The record does not show who ultimately selects outside contractors. The foremen do not regularly meet with the City administrator or other City official. The City administrator communicates with the foremen on an as needed basis or through work orders. The foremen do not present annual reports for the council but do draft reports on matters as requested.

**Maintenance Operations Coordinator / Water / Wastewater Foreman.**

Roger Gries's position is now termed "maintenance operations coordinator" but he appears to currently serve in multiple capacities for the City. He is considered by everyone to be the interim superintendent of utilities and the foreman for the water/wastewater department. Neither party submitted a job description for the "maintenance operations coordinator" but some responsibilities were shown through witness testimony. The position's

duties include opening mail and completing administrative paperwork for the five departments such as lab work forms for the water departments, building permit forms, and paperwork relating to tree ordinances. Gries also handles phone calls on behalf of the individual departments when citizens report issues. He then documents the issue on a work order and delivers it to the appropriate department to resolve. Gries spends approximately fifty percent of his time completing administrative tasks for the five departments.

Gries spends the other fifty percent of his time as the foreman for the water/wastewater treatment department. Although his official title with the City is "maintenance operations coordinator," Gries considers himself to be the water/wastewater treatment foreman. He believes he only agreed to perform administrative tasks previously handled by the superintendent of utilities on a temporary basis and his primary duties relate to the water/wastewater treatment department. Each day, after completing the administrative tasks described above, Gries goes to the water plant to perform his duties for the water/wastewater treatment department. He is the only certified operator for the treatment plant but he is in the process of training another employee to become certified. For the department, Gries is in charge of completing and certifying annual surveys and reports to comply with water safety and pollution regulations. Gries oversees two employees in the department, helps correct any problems, and answers employees' questions. However, as a practical matter, he performs the same duties as the other department employees and much of the work is done on an as needed basis. He prioritizes tasks for

emergencies but allows the department employees to work independently. He also makes budget recommendations for the water/wastewater treatment department.

As foreman for the department, he performs evaluations for the other employees, and has authority to grant or deny leave requests and overtime. Employees write down requests for leave on a calendar and requests are generally never denied. Overtime is assigned on an as needed basis. Much of the water plant is automated and overtime would only be needed in an emergency situation. Gries does not have authority to independently discipline or suspend employees. He tries to talk to employees about problems and if further action was ever needed, he would report it to the City administrator. Similarly, Gries has no authority to resolve grievances formally but he tries to help resolve issues informally. Gries does not have authority to lay off or recall employees or to promote employees.

Gries is also the City's representative for conducting drug and alcohol testing of employees. It is unclear whether this is a responsibility of the "maintenance operations coordinator" or whether he acquired this responsibility as water/wastewater treatment foreman.

**Water/Sewer Foreman.** Carl Lamb is the water/sewer foreman. The responsibilities of this position are listed in the job description as:

Supervises, performs, and assists in planning skilled work in the construction, maintenance, and repair of water distribution and sewer collection lines and related equipment. Crew foreman in charge of scheduling daily workload and delegating job assignments to full and part-time members of his crew. Supervises mechanical maintenance work to be done at the Water

and Wastewater Treatment Plants. Ensures that all service calls are completed in a timely manner. Oversees inventory and purchasing of materials related to the construction, maintenance, and repair of lines and equipment in the distribution/collection system. Responsible for seeing that all non-functioning or malfunctioning water meters are repaired or replaced in a timely manner. Performs manual and skilled labor, operates light and heavy equipment as necessary to complete job tasks. Responsible for keeping up-to-date maps of the distribution system and collection system as well as locations of taps, repairs, and service lines. Assist all other City [d]epartments or delegate crew members to assist, as necessary, by performing manual and skilled labor and operating light and heavy equipment (CDL required). Performs week]]end duties at both treatment plants. Works on the preparation and shutdown, as well as some maintenance and repairs of the City Aquatic Center, Gaukel Park public restrooms, and drinking fountains at all parks. Read and record readings of electrical and water meters. Performs such other duties as may be assigned from time to time.

Lamb is responsible for the day to day operations for the water/sewer department and oversees two employees. The City administrator relies on him to run the department's daily operations. He receives work orders from Gries and then assigns the work to department employees. He also participates in completing the work orders, does routine daily maintenance, and helps other departments as needed, as do the other water/sewer employees. He is currently in charge of a leak detection project. He is not involved in training new employees. Lamb sets the daily priorities for the department but many decisions are made as a team with the other department employees. He believes the other employees can work independently without his guidance.

Lamb has performed probationary evaluations and annual evaluations for other department employees. The department employees record their requests for leave on a calendar. Lamb does not formally grant leave requests

and he feels he does not have authority to deny leave requests. He asks employees to work overtime but only on an emergency basis and in his opinion, he does not have authority to order someone to work overtime. He does not have authority to discipline or suspend employees, or adjust grievances. He is uncertain whether he could issue a verbal warning. If a problem were to occur, he would report it to Gries or to the City administrator. He does not have authority to lay off or recall employees, or to promote employees. Lamb is responsible for making budget recommendations for the water/sewer department. He makes his recommendations based on the knowledge he has gained through working for the department, and based on prior years' budgets.

**Electric Foreman.** Vincent Phillips is the electric foreman. The job description summarizes the responsibilities for this position as:

Supervises, performs, and assists in planning skilled work in the construction, maintenance, repair of electrical transmission and distribution lines and related equipment. Crew foreman in charge of scheduling daily workload and delegating job assignments to full and part-time members of his crew. Oversees inventory and purchasing of materials related to the maintenance and repair of transmission lines and equipment. Responsible in seeing that all service calls are handled in a timely manner. Responsible in making sure that at least one member of the electrical crew will be available at any hour of any day. Operate heavy and light equipment necessary in the performance of maintenance, repair, and construction related to the job (CDL required), assists all other City departments, or delegate crew members to assist, when necessary, by performing skilled or manual labor and operating heavy and light equipment. Ensures that his crew members comply with all personnel, safety, and other City policies. Reads and records readings of electrical and water meters. Performs such other duties as assigned from time to time.

Phillips is responsible for the daily operations of the electric department and the City administrator relies on him to ensure the department runs

smoothly. Phillips oversees two other employees in the department. He ensures that someone is on duty or on call twenty-four hours a day, seven days a week. His work depends on the circumstances. Gries funnels work orders for the electric department to him, and he assigns the work orders to himself and the crew members. He and the crew members often work as a team but he is in charge of prioritizing and assigning work. He does not train the other department employees but does answer employee questions. Previously, questions were directed to the superintendent of utilities. Onawa is a member of a regional electric cooperative and Phillips represents the City in cooperative meetings.

There was no evidence submitted as to whether Phillips performs evaluations. Employees call Phillips when they will be absent due to illness and he records it on the employee's time sheet. The employees indicate when they will take time off on a calendar and the employees do not have to "request" time off. However, if multiple employees needed time off, Phillips would have to consider the circumstances to determine whether it was feasible to have multiple persons off at the same time. Phillips also assigns overtime but it is only done on an emergency basis due to a power outage. He does not have authority to formally discipline or suspend employees, or handle grievances. But if a problem were to arise, he would talk with the employee, note it in the employee's file, and if more action was needed, he would report it to Gries or the City administrator. Phillips does not have authority to lay off or recall employees, or reward or promote employees. He makes budget

recommendations for the department to the City administrator. In previous years, he made budget recommendations to the superintendent of utilities. Phillips has authority to make purchases for the department.

**Cemetery Sexton / Street Foreman.** Randy Larson is the cemetery sexton/street foreman for the City. The job description sets forth the following responsibilities for this position:

Performs all tasks, as directed by the Onawa Code of Ordinances, necessary and incidental to the planning and upkeep of the City [c]emetery. Ensures that graves are opened in a timely manner and in the correct location for burials. Responsible for enforcing the City [c]emetery ordinance. Oversees the recording of deaths and places of burial, assisting with the purchase of lots and spaces. Directs the construction and maintenance of streets and related facilities. Crew foreman in charge of scheduling daily workload and delegating job assignments to full and part-time members of the crew. Performs skilled and manual labor, operates light and heavy equipment (CDL required) as necessary in the performance of his job. Responsible for seeing that the proper materials and equipment are available to complete any street and cemetery work. Assists all other departments, or delegates crew members to assist, when necessary, by performing manual or skilled labor and operating light and heavy equipment. Oversees pesticide application for the City (must have pesticide applicator license). Ensures that all crew members comply with personnel, safety and other City policies. Performs such other duties as assigned from time to time. May be required to inter or disinter human remains.

Larson is responsible for the daily operations of the cemetery and street department and the City administrator and council rely on him to run the department. He oversees three full-time employees and a number of seasonal employees. The cemetery and street crew look to him for job assignments and their work schedule. Gries delivers cemetery and street work orders to Larson and Larson assigns the tasks to the crew and helps complete the work orders.

He prioritizes work for the department but often the priorities are determined by the work orders and Larson and the crew members often work as a team. Larson is appointed by the council to be the delegate at burials. His daily duties include handling pending work orders, and performing routine street maintenance with the crew members including street cleaning, patching pot holes, repairing curb damage, ensuring proper blading of gravel roads, and mowing. Other routine tasks include putting out school stop signs, cleaning, greasing, and fueling mowers, and repairing signs. He has been in charge of a special drainage improvement project for the department.

Larson performs evaluations of the cemetery/street crew members and gives the evaluations to the City administrator. Crew members request time off from Larson and Larson approves the leave request after checking the department calendar and reviewing the request with Gries. He also assigns overtime but this is determined by weather conditions. Overtime is only utilized in emergency situations or for necessary snow removal. He has no authority to formally discipline or suspend employees, or handle grievances. Larson has given verbal warnings such as telling employees they need to get to work on time. If further action was needed, he would report the situation to Gries and then the City administrator. Larson has no authority to lay off or recall employees, or to promote or reward employees.

Larson prepares budget recommendations for the department by composing a draft budget estimating the funds needed for supplies and equipment. When the City imposed budget cuts in recent years, Larson

implemented an across the board cut to each budget item for his department. At the time of the hearing, Larson was not on the hiring committee but had served on it in the past. Previously, the superintendent hired seasonal employees for the cemetery/street department, with input from Larson. It is unclear how seasonal employees are hired now.

#### CONCLUSIONS OF LAW

The issue presented is whether the maintenance operations coordinator and the foremen for the water/sewer, electric, and cemetery/street department should be included in the collective bargaining unit composed of other City employees. The City argues these positions should not be included in the bargaining unit because they are “representatives of the public employer” within the meaning of Iowa Code section 20.4(2). The Union contends the positions should be included in the unit because the positions do not meet the criteria to be a “representative of a public employer” under section 20.4(2).

Iowa Code section 20.4 provides in relevant part:

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

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or a major division thereof as well as . . . any supervisory employees.

Iowa Code § 20.4(2). PERB interprets these exclusions narrowly because chapter 20 “is written in broad language so as to allow a large number of public employees to be eligible for coverage . . . .” *Iowa Association of School Boards v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987). The City, as the party seeking the

exclusion, bears the burden of proving the exclusion applies. *City of Iowa City & AFSCME Local 183*, 02 PERB 6353 at 5.

**Administrative Officers, Directors or Chief Executive Officers of Major Divisions.** Representatives of a public employer include an employer's administrative officers, directors and chief executive officers and the administrative officers, directors and chief executive officers of the major divisions of an employer. Iowa Code § 20.4(2).

Chapter 20 does not define "major division." *Council Bluffs Community School District and Communications Workers of America, Local 7103*, 03 PERB 6514, 6516, 6536 at 27 (affirmed by *Council Bluffs Community School District v. PERB*, CVCV086308 (District Ct. May 28, 2004)). PERB identifies major divisions of public employers on a case by case basis, considering the employer's organizational structure, management style, and the distinct functions of each organizational unit. *Id.* at 27-28; *Davenport Community School District & AFSCME/Iowa Council 61*, 96 H.O. 5436 & 5467 at 22-24. The structural relationship between the division and the employer entity is more important than the functional duties of the division's employees. *Western Hills Area Education Agency & Professional Staff Association of AEA 12*, 84 H.O. 2581 & 2597 at 6-7. PERB has historically found that a major division must be a unit larger than the smallest operational component.<sup>3</sup> Generally "only the

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<sup>3</sup> See *Council Bluffs Community School District*, 03 PERB 6514, 6516, 6536 at 27 (stating that "major division" means an organizational component larger than each individual school in a school district"); *Mediapolis Community School District & AFSCME/Iowa Council 61*, 00 PERB 5927 at 10 (same) (affirmed by *Mediapolis Community School District v. Public Employment Relations Board*, Case no. LALA 001660 (Dist. Ct. 2001)); *Davenport Community School District & AFSCME/Iowa Council 61*, 96 H.O. 5436 & 5467 at 22-23; *Western Hills Area Education*

largest divisions of large public employers” are found to be “major divisions” within the meaning of the statute. *Council Bluffs Community School District*, 03 PERB 6514, 6516 & 6536 at 27; see *City of Dubuque & International Union of Operating Engineers*, 82 H.O. 2209 at 4 (finding “water division” a “major division” because it was the second largest organizational unit in terms of the number of its employees, and the employer was organized into ten different departments with some departments composed of smaller divisions).

The City’s organizational chart shows a number of departments, all overseen by the City administrator. The City does have distinct divisions, including the streets, water/sewer, electrical and water/wastewater but none of these divisions have smaller units within them. Therefore, these departments are not “major divisions” under section 20.4(2) as that term has been interpreted by PERB, and hence the foremen of these departments are not excluded as administrative officers, directors, or chief executive officers of major divisions. Also, there was no evidence presented to demonstrate what, if any, “major division” the maintenance operations coordinator leads. Although he provides some administrative guidance to individual departments, there was no evidence showing that he leads any specific major division of the City.

**Managerial Employees.** The City also argues the maintenance operations coordinator and foremen are excluded because their substantive

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*Agency 12 & Professional Staff Association of AEA 12*, 84 H.O. 2581 & 2597 at 6; *Lyon County & International Brotherhood of Painters & Allied Trades, Local No. 246*, 80 H.O. 1621 at 29; *City of Akron & International Brotherhood of Electrical Workers, Local No. 55*, 79 H.O. 1438 at 5; *Johnston Community School District & Johnston Educational Support Personnel Association*, 76 PERB 500 at 2-3, 6-7 of ALJ decision (adopting administrative law judge’s conclusion that “major division” was intended to be a division larger than the employer’s smallest operational unit).

duties show they are “managerial employees.” PERB has long held that managerial employees are “representatives of public employers” within the meaning of section 20.4(2). *See, e.g., Council Bluffs Community School District*, 03 PERB 6514, 6516 & 6536 at 21-25; *Dickinson County Memorial Hospital & Dickinson County Memorial Hospital Professional Nurses Association*, 85 PERB 2759 at 3-5; *Davenport Community School District & Davenport Education Association*, 75 PERB 72 at 15-17. Managerial employees are not specifically listed in section 20.4(2) but PERB has found these types of employees excluded as representatives of the public employer because they are closely involved in the employer’s policy functions and their responsibilities place them in potential conflict with bargaining unit employees. *Dickinson County Memorial Hospital*, 85 PERB 2759 at 3-5; *Davenport Community School District*, 75 PERB 72 at 17. PERB follows the analysis of the National Labor Relations Board in determining whether employees are “managerial.” *Dickinson County Memorial Hospital*, 85 PERB 2759 at 8; *Davenport Community School District*, 75 PERB 72 at 15-17. It considers:

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.

*City of Farley & General Drivers & Helpers Union, Local No. 421*, 95 PERB 5220 at 11; *Davenport Community School District*, 75 PERB 72 at 15. “The

‘managerial employee’ exclusion is intended to apply only to those at higher levels of the managerial structure who exercise discretion in formulating, determining, and effectuating employer policy . . . .” *City of Farley*, 95 PERB 5220 at 34.

The maintenance operations coordinator and foremen meet the first requirement for managerial status. Their responsibilities for the budgets for their individual departments and influence in the hiring process, as well as involvement in employee evaluations place them in a position of potential conflict of interest between the employer and the other employees. However, the evidence falls short of establishing the second part of the analysis for managerial status. The City presented no evidence to show how the maintenance operations coordinator or foremen formulate, determine or effectuate the City’s policies or that they perform their duties with discretion that is independent of the City’s policies. The record does not show how the employees help formulate or implement the City’s policies through their budget responsibilities. The foremen do not use independent discretion in formulating their budget recommendations because they make projections based on the prior year’s budget and they generally implement budget reductions by making an across the board cut. Also, although the foremen’s involvement in hiring and evaluating employees puts them in potential conflict between the City and the employees, there was no evidence to show that these duties assist in the formulation or implementation of the City’s policies or that the employees use discretion independent of the City’s established policies in the hiring or

evaluation process. Their participation on a hiring committee and completion of employee evaluations does not establish this required element. “[H]aving some input in supervisory decisions, without more, is insufficient to establish ‘managerial’ status.” *Council Bluffs Community School District*, 03 PERB 6514, 6516, 6536 at 34. In other cases where managerial status is found, there has been additional evidence of the employee’s participation in policy development or implementation, or proof that the employee uses discretion independent of the employer’s policies.<sup>4</sup> In *City of Farley & General Drivers & Helpers Union, Local 421*, 95 PERB 5220 at 15-16, the Board concluded a superintendent of public works was a managerial employee. The superintendent performed many of the responsibilities that the maintenance operations coordinator and foremen perform in this case, including setting priorities for the public works department independently without significant communication with higher authority. *See id.* In *Farley*, as in this case, the City council and mayor relied

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<sup>4</sup> *See City of Manchester & Teamsters Local 421*, 06 PERB 6917 at 11 (stating that the employees at issue were “active members of the management team” who “discuss and make recommendations concerning management policy matters and methods to implement policies, including matters such as employee evaluation methods [and were] involved in “annual goal-setting management meetings”); *City of Farley*, 95 PERB 5220 at 7-8, 15-16, (concluding that a superintendent of public works was managerial due, in part, to his exercise of “considerable discretion in carrying out public works activities, with very little oversight from or regular communication with the mayor or city council”); *Davenport Community School District*, 75 PERB 72 at 16-17 (finding curriculum coordinators to be managerial employees and describing in detail their responsibilities as including recommendations on hiring and evaluation matters, as well as playing a major role in developing and implementing academic programs and having the authority to override a building principal on some budget decisions); *Henry County Board of Supervisors & AFSCME Council 61*, 85 H.O. 2977 at 8 (concluding an activity coordinator was managerial because she had a great deal of discretion involving the promulgation of policy, including not only administering a budget, but also planning all resident activities, running a volunteer program, and performing public relations and publicity work for the employer); *Western Hills Area Education Agency 12 & Professional Staff Association of AEA 12*, 84 H.O. 2581, 2597 at 11-12 (concluding a library media specialist was managerial and noting her responsibilities included, among other things, administering a budget, outlining goals and implementing objectives for the media center, and reviewing policies and procedures for her division).

on the superintendent to make budget recommendations and to operate within the department's budget through the fiscal year. *Id.* at 16. However, in *Farley*, there were specific examples of how the superintendent exercised independent discretion. *See id.* at 7-8. For example, the superintendent independently determined when outside help was needed and hired a contractor to perform snow removal, excavation, and dirt hauling. *Id.* He also independently determined when temporary help was needed and hired seasonal and temporary workers when needed. *See id.* In this case, there was vague testimony that the maintenance operations coordinator and foremen set priorities for their departments and that the City council and City administrator rely on the maintenance operations coordinator and foremen but there were no specific examples of how the coordinator and foremen are involved in policy functions or how they exercise discretion independent of the City's policies. While there was general testimony that the maintenance operations coordinator and foremen carry out budget responsibilities and special projects with little or no oversight, there simply was no detail presented to show how these tasks require them to formulate or implement policy or use their discretion outside of established policy. Therefore, under the totality of the facts and circumstances of this case, the maintenance operations coordinator and foremen are not managerial employees.

**Supervisory Employees.** The City also contends the maintenance operations coordinator and foremen are 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.

Iowa Code § 20.4(2).

Supervisory status is not determined by job title. “The title a position carries has little bearing on whether it is supervisory. It is the function rather than the label which is significant.” *City of Davenport v. PERB*, 264 N.W.2d 307, 314 (Iowa 1978). Likewise, supervisory status is not determined by job description. Supervisory status must be shown through evidence of actual authority, not simply demonstrated on paper. *Id.* Tangible examples of an employee’s authority indicate supervisory status. *See City of Davenport*, 264 N.W.2d at 314; *City of Cedar Falls & Cedar Falls Firefighters Association*, 06 PERB 6868 at 21. Yet, “it is the existence of the power and not its exercise which is determinative.” *City of Davenport*, 264 N.W.2d at 314.

Proof that an employee has the authority to perform any one of the responsibilities listed in section 20.4(2) is sufficient to establish supervisory status. *State of Iowa Department of Personnel v. PERB*, 560 N.W.2d 560, 562 (Iowa 1997); *City of Davenport v. PERB*, 264 N.W.2d 307, 314 (Iowa 1978). In performing the responsibility, the employee must (1) have authority, (2) to use independent judgment, (3) in the interest of management. *State of Iowa Department of Personnel*, 560 N.W.2d at 562; *City of Davenport*, 264 N.W.2d at 314. If the responsibility is routine or clerical, it does not require the use of

“independent judgment” and will not be considered supervisory. *City of Davenport*, 264 N.W.2d at 314; *City of Sioux City & Sioux City Professional Fire Fighters Association*, 98 PERB 5751 at 9. “[T]he directing and assigning of work by a skilled employee to less skilled employees [also] does not involve the use of independent judgment when it is incidental to the application of the skilled employee’s technical or professional know-how.” *City of Davenport*, 264 N.W.2d at 314. PERB looks to the employee’s regular responsibilities and functions, not temporary or occasional duties. *Id.* at 315.

At the hearing, the City presented no evidence to show that the maintenance operations coordinator or foremen have independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, or reward employees. There was some evidence showing these positions have authority to assign, direct and discipline employees within their individual departments.

The foremen provide daily assignment and direction to employees within their departments. But, this assignment and direction appears to be done in a routine fashion rather than through the use of independent judgment in the interest of management. The foremen and other department employees generally do the same work and work together. “Assigning employees to work on a routine basis is insufficient to create supervisory status because it does not require independent judgment within the meaning of the statutory definition.” *City of Davenport*, 264 N.W.2d at 321. The foremen’s roles are akin to those of leadmen or straw bosses. Their assignment and direction of work is based on who is available, whether the situation is an emergency, weather

conditions, or technical knowledge and experience. To qualify as a supervisor due to an employee's responsibility to direct other employees, "[t]he responsibility must be substantial and pervasive enough to make the employee a part of management, not simply a leadman or straw boss." *City of Davenport*, 264 N.W.2d at 322. Even though the maintenance operations coordinator distributes work orders to the street, electrical, and water/sewer departments, this is merely a procedural administrative task, rather than the assignment or direction of the departments' work. To be considered supervisory, a responsibility cannot "be so proceduralized that it becomes routine and does not involve the exercise of independent judgment." *Id.*

There was testimony that the maintenance operations coordinator and some of the foremen may give verbal warnings to employees and try to resolve problems by talking with the employee. However, "[f]or an employee to be a supervisor based on authority to discipline, he must have more than the power to issue verbal reprimands." *City of Davenport*, 264 N.W.2d at 321. Since the foremen do not have independent authority to discipline beyond issuing verbal warnings, they are not excluded as supervisory on this basis. Some foremen testified that they would report discipline issues to the maintenance operations coordinator, as the interim superintendent of utilities. But there is no evidence showing that the maintenance operations coordinator is charged with independent authority to discipline employees of any of the departments. He testified that he would report discipline issues to the City administrator. I

therefore conclude that the maintenance operations coordinator also is not a supervisor on this basis.

Supervisory status can also be established through proof that an employee has the authority to make “effective recommendations” with regard to at least one of the enumerated responsibilities in the statutory definition of “supervisory employee.” See Iowa Code § 20.4(2). An effective recommendation means one “which under normal policy and circumstances, is made at the chief executive level or below and is adopted by higher authority without independent review or de novo consideration as a matter of course.” *City of Davenport*, 264 N.W.2d at 321; *City of Cedar Falls*, 06 PERB 6868 at 22. “[A] mere showing that recommendations . . . were ultimately followed does not make such recommendations ‘effective’ within the meaning of the statute.” *City of Davenport*, 264 N.W.2d at 321.

The maintenance operations coordinator and foremen also do not make “effective recommendations” within the meaning of section 20.4(2). The foremen, with the exception of the cemetery sexton/street foreman, have considerable influence on who is hired by their service on the hiring committee, but since the decisions are made as a group, their recommendations are not “effective recommendations” as that term has been interpreted. They have input on the hiring committee but no individual’s hiring recommendation is adopted without input and review by others. Accordingly, the maintenance operations coordinator and foremen are not supervisors under this theory. See *City of Cresco and Local 1068 AFSCME, AFL-CIO*, 99 PERB 5905 at 7-8 (finding

the assistant chief of police was not a supervisor due to his involvement on a hiring committee because he did not make hiring decisions independently and his vote on the committee was not an “effective recommendation”).

### CONCLUSION

In sum, I conclude that these employees are not administrative officers, directors or chief executive officers of “major divisions” of the City. They are not “managerial” employees and do not have the requisite authority to be “supervisory” employees. Therefore, the maintenance operations coordinator, water/sewer foreman, electric foreman, and cemetery sexton/street foreman are not excluded under section 20.4(2) as representatives of the public employer.

### ORDER

In accordance with Iowa Code section 20.13, the following is determined to be an appropriate bargaining unit of employees for the City of Onawa:

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

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

This proposed decision will become PERB’s final decision on the bargaining unit determination portion of the combined petition pursuant to PERB rule 621—9.1 unless, within 20 days of the date below, a party aggrieved

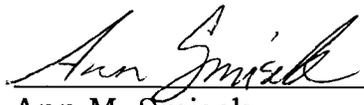
by the proposed decision files an appeal to the Board or the Board, on its own motion, determines to review the proposed decision.

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

IT IS ORDERED that an employee representative certification election be conducted pursuant to section 20.15(1), 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 this proposed decision 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 this proposed decision 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 27th day of November, 2012.



Ann M. Smisek  
Administrative Law Judge

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