

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

DUBUQUE COUNTY,
Public Employer,

and

TEAMSTERS LOCAL UNION NO. 120,
Certified Employee
Organization/Petitioner.

CASE NO. 8700

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PUBLIC EMPLOYMENT
RELATIONS BOARD

PROPOSED DECISION AND ORDER

This is a public employee bargaining case under Iowa Code Chapter 20.13. Petitioner Teamsters Local Union No. 120 is the certified employee organization for certain groups of Dubuque County employees. In 2012, the Dubuque County health board created, and the County board of supervisors approved, a new position in the health department, namely, assistant health administrator (AHA). The issue presented is whether the AHA classification should be excluded from the existing bargaining unit. When the Union and the County failed to agree, on October 7, 2013, the Union filed this petition to amend its bargaining unit.

This Administrative Law Judge held a contested case hearing on January 13, 2014. The Union was represented by Attorney Kyle McCoy, of the Soldon Law Firm, LLC, Ann Arbor, Michigan. The County was represented by Attorney Art Eggers, of Califf & Harper, Moline, Illinois. Both sides filed post-hearing briefs.

After a review of the pleadings, the evidence, the arguments, and the law, this ALJ concludes that the new AHA classification will be excluded from the

Union's bargaining unit.

Findings of Fact

Teamsters Local Union No. 120 serves as the certified employee organization for certain groups of Dubuque County employees. Since 2006 the Union's bargaining unit has been described as:

INCLUDED: Offices of the Auditor; Recorder; Treasurer; Board of Supervisors; County Library; Micro-film; Building Maintenance; Zoning; Clerical employees of the County Attorney; Health Department; and General Relief and County Conservator.

EXCLUDED: Probation; Sheriff; City Assessor; County Assessors; Professional; Supervisory; Directors; Clerk of District Court and those excluded by Iowa Code section 20.4.

Dubuque County is a public employer within the meaning of Iowa Code section 20.3(10). Dubuque County's organizational chart includes fifteen departments: conservation, county attorney, library, veteran's affairs, auditor, sheriff, nursing home, treasurer, courthouse maintenance, budget director, personnel, recorder, secondary roads, general assistance, and health. Of these fifteen county departments, four report to their own separate boards. These four departments are: health, veterans' affairs, conservation, and library. The instant dispute pertains only to the County health department, which is overseen by, and is under the jurisdiction of, the County health board.

In Iowa, statutory authority for a County health board is found in Iowa Code Chapter 137, titled "Local Boards of Health." Section 137.103(2) provides a County health board with broad jurisdiction, "A county board shall have jurisdiction over public health matters within the county." A County health

board consists of at least five members, one of whom is a licensed physician. § 137.105(d) Members are appointed by the County board of supervisors and serve, without compensation for a three year term, which may be renewed. §§ 137.105(b)(e) and (f).

A County health board has the authority to enforce state health laws and lawful orders of the Iowa Department of Public Health. §137.104(1)(a). A County health board also has a basic power to:

[m]ake and enforce such reasonable rules and regulations not inconsistent with law, the rules of the state board, or the Iowa public health standards as may be necessary the protection and improvement of the public health.

§ 137.104(2)(b) Although a County health board rules are subject to approval by the County board of supervisors, once the rules are in place, a County health board may go into court--as a named party—to enforce its rules without first obtaining the supervisors’ approval. *Kasperek v. Johnson County Brd. of Health*, 288 N.W.2d 511, 514-15 (Iowa 1980).

What is more, a County board of health has the statutory authority to “employ persons as necessary for the efficient discharge of its duties.” § 137.104(4)(c) This statutory authority is not expressly subject to approval by the County board of supervisors. Finally, under Chapter 137, the County board of health has jurisdiction over all County health department personnel and property. § 137.102(5).

In addition to the authority it has under Iowa Code Chapter 137, a County health board has extensive authority pursuant to other Iowa Code

chapters: §§ 139A.4, 139A.9, 139A.12 (authority to impose and enforce isolation and quarantine restrictions), 139.A.8 (immunization of children), 137C.6(2) (local health board by agreement between governmental subdivision and director of inspection and appeals shall enforce Iowa hotel sanitation code), 143.1 (employment of public health nurses), 351.36 (enforce statutory provision relating to vaccination and impoundment of dogs), 351.40 (on belief rabies to be epidemic in its jurisdiction, to declare quarantine), 455B.172(3) (requires county board of health to adopt and enforce standards for private water supplies and private sewage disposal facilities), 455B.303 (director of Department of Natural Resources may delegate to local health boards the department's administrative duties pertaining to solid waste, refuse disposal plants, and sanitary disposal projects).

In Dubuque County the five member County health board is chaired by Dr. Richard Fairley, M.D. The Board's stated mission is:

To protect, promote, and enhance the health and well-being of all people and the environment in Dubuque County through:

- Assessment of community and environmental health status, policy, development, and assurance that public health needs are met.
- Cultivation of knowledge and behavior conducive to healthy lifestyles.
- Focus of resources toward prevention and early intervention.
- Leadership and collaboration with other agencies.
- Responding to disasters and assisting communities in recovery.
- Assuring the quality and accessibility of health services.

Dr. Fairley testified, and this ALJ so finds, that the County board of health has full authority over the County's health department staff in their implementation of this mission. The health department is funded by grants,

environmental public health duties, including water quality and private sewage systems. The three page job description is attached as Appendix A.

Significantly the AHA job description includes:

- Serving as back up for the County health department director.
- Working closely with the County board of health, including serving as Board secretary.
- Being available 24/7 for Homeland Security health alerts.
- Enforcing health ordinances.
- Responsibility for State of Iowa grants.
- High school diploma (or equivalent) as well as possessing, and remaining current on, all state and federal certifications. An R.N. degree is not required.

At the same time the County health board created the new AHA position, it also authorized the department to hire a part-time administrative assistant to perform clerical work for the health department. This position was also approved by the County board of supervisors. In sum, since 2012 the County health department has consisted of two full-time employees and one part-time employee:

1. Executive Director, Ms. C. Patrice Lambert, RN, MSN;
2. Assistant Health Administrator, Ms. Bonnie Brimeyer; and
3. Office Assistant. Ms. Liz Willems (part-time).

To be clear, it is Brimeyer's position — the AHA — which the Union contends should be included in its current Bargaining unit.

Since she began work as the AHA, Brimeyer has reported directly to executive director Lambert. Brimeyer is second in command in the department and has authority to make decisions in Lambert's absence. This would include, but is not limited to, Brimeyer's authority to be in charge in the case of a health emergency such as a viral outbreak. In such an event, Brimeyer could

act without going to a higher authority. In addition to the duties outlined above, other examples of Brimeyer's authority include signing payroll forms for department employees and signing contracts with the State of Iowa on behalf of the County board of health in connection with grant funding.

Brimeyer has responsibility for the health department's environmental activities and provides direct assistance and support to executive director Lambert, in her managerial duties, more so than any other employee. In this supporting role, Brimeyer is in charge of septic systems and wells for Dubuque County. She handles any complaints regarding these systems when reported by the public. And, if necessary, she assists residents in obtaining loans to bring their septic tanks into compliance. Brimeyer also is directly responsible for administering grant monies made available to plug unused wells so they do not pose a public hazard.

In connection with the grants program, Brimeyer is the fiscal agent who reviews the charges made by subcontractors to ensure compliance with the grant guidelines and then approves or disapproves payment to the subcontractor. She also prepares the health department's plan for compliance with the Grants-to-Counties program, which contains a number of goals and restrictions to ensure proper use of these earmarked funds.

Finally, Brimeyer prepares that portion of the health department's budget pertaining to environmental line items such as well tests, septic permitting, and funds for the grants to counties program. As the AHA, Brimeyer joins Lambert when they present the department's annual budget to

the County board of supervisors for approval and, if needed, to answer their questions.

As AHA, Brimeyer supervises and has trained Willems, the health department's administrative assistant, with regard to the department's clerical duties. Willems' position is included in the Bargaining unit. Willems' duties differ from the AHA position in a number of ways. First, Willems does not perform the same work as the AHA. Nor does Willems make policy or have the authority to develop health department procedures. Unlike the AHA, Willems does not contribute items to the budget, nor is she on call 24 hours a day. Finally, in her position as the AHA, Brimeyer receives a salary, whereas Willems is a part-time employee who is paid an hourly wage.

Conclusions of Law

a. Jurisdiction

The PER Board has jurisdiction pursuant to Iowa Code section 20.13.

b. § 20.4 Exclusion

The Union seeks to add the new AHA classification to the existing Bargaining unit. The County contends that the AHA classification is statutorily exempt by Iowa Code section 20.4 for one or more of the following reasons: 1) The AHA is a first assistant; 2) The AHA is a deputy; or 3) The AHA is a supervisor. Because this ALJ concludes that the AHA is excluded as a "first assistant" of a "major division" this ALJ need not address whether the AHA classification is a "deputy" or a "supervisor".

(1) Major Division

Section 20.4(2) provides:

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 *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. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

(Emphasis added.)

The Iowa Public Employment Relations Act is written in broad terms to allow a large number of public employees to be eligible for coverage under its provisions. Accordingly, the PER Board interprets section 20.4 exclusions narrowly to accomplish this objective. The County, as the party asserting the exclusion, bears the burden of establishing that the exclusion applies. *City of Onawa and AFSCME Council 61*, PERB #8505 (filed Nov. 27, 2012) at 14-15 (and cases cited therein).

Chapter 20 does not define "major division." The PER Board has identified "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 15. The structural relationship between the division and the employer entity is more important

than the functional duties of the division's employees. *Id.*

PER Board precedent has defined a "major division" in one of two ways: either, 1) the unit is larger than the smallest operational component; or 2) the unit must function with a considerable degree of autonomy greater than that of most other departments.

Thus, in the early case of *City of Dubuque and International Union of Operating Engineers*, PERB #6514 (filed June 8, 1982) at 4, the PER Board found the City's water division a "major" division because it was the second largest organizational unit in terms of the number of its employees, and the City was organized into ten different departments with some departments composed of small divisions. Note, under this definitional approach, generally only the largest divisions of a large public employer are found to be "major" division. *City of Onawa, supra*, at 15-16 (and cases cited therein).

The second definitional approach which focuses on the degree of a unit's autonomy was first recognized in *City of Estherville and United Food & Commercial Workers, Local 79-A*, PERB #1751 (filed Nov. 30, 1981). In *City of Estherville*, the question was whether the assistant Library director should be excluded from the bargaining unit. The PER Board determined the City's library to be a "major" division of the City because the operation of the Library was controlled by a separate governing body—the City Library board—with near-autonomous authority. The Estherville Library board had exclusive control over the expenditure of funds, the purchase of books, the hiring of the Library director, the fixing of fees, control of the facility, and all day to day

operations. Library board members, once appointed by the mayor and approved by the council, had complete authority over the Library subject only to the City's labor contracts and approval of its annual budget. The PER Board concluded that because the Library functioned with a degree of autonomy greater than that of most Estherville city departments, the Library was a "major" division as described in Iowa Code section 20.4(2). *Id.* at 3.

Applying this precedent to the instant facts, which substantially mirror those of the *City of Estherville*, this ALJ concludes that the County health department is a "major" division as described in Iowa Code section 20.4(2). Similar to the Estherville Library board, the Dubuque County health board has near autonomous authority to control and set policy for the County health department to include: hiring, determining a budget, day to day operations, setting and collecting fees, testing, establishing local regulations, and assuring the quality and accessibility of proper health and environmental services. If necessary, the County health board may bring enforcement actions in its own name, without first seeking the approval of County board of supervisors. Nor is the County health board's authority limited to the broad language contained in Iowa Code Chapter 137. Several other code provisions such as those relating to quarantines, vaccinations, and enforcement of private water system standards substantially broaden the scope and authority of the County health board. Next, similar to the Library board in City of Estherville, the Dubuque County health board is subject to little oversight by its appointing authority, other than budgeting and employment contracts. Finally, just as the

Estherville Library had more autonomy than most of the other city departments, so, too, does the County health department, when compared to at least ten of the other Dubuque County departments that do not report to separate boards.

(2) *First Assistant*

Similar to the terms “major division,” Iowa Code Chapter 20 does not define “first assistant.” PER Board precedent limits a “first assistant” to that employee (if any) whose role in aiding the division’s executive officer with his or her managerial responsibilities is greater than that of any other employee in the division. *City of Eagle Grove and Teamsters Local 238*, PERB #8459 (filed Apr. 18, 2012) at 10 (citing *Jasper County and AFSCME Iowa Council 61*, PERB #6766 and #6782 at 16).

In *City of Estherville, supra*, the PER Board concluded that the assistant Library director met this definition because the employee:

- Performed administrative library work involving the supervision of the daily library operations as set forth by the Director and within the policy established by the Library board.
- Assumed responsibility for day-to-day operation of the Library in the Director’s absence.
- Delivered collected funds to City Hall, sorted and answered mail, organized and supervised duties of part-time custodian, prepared agenda, necessary reports for the monthly Library board meeting, and, in the absence of the Library director, reported matters of immediate concern to the Library board president.

Id. at 2. Significantly, the PER Board found that the assistant Library director met the definition of “first assistant,” even though the assistant Library director had no authority to hire, discipline, assign, or discharge employees. *Id.*

Similarly, in the instant case, Brimeyer in her position as the AHA has authority to act in the absence of the executive director, Lambert, including handling the day to day operations of the department. While Brimeyer does not have the nursing credentials possessed by Lambert, that does not diminish Brimeyer's authority *to manage* day to day office operations in Lambert's absence. And, similar to Estherville's assistant Library director position, Brimeyer also supervises Willems who performs part-time, the clerical duties of the department.

Brimeyer's duties are distinct from the clerical requirements of the health department and include assisting Lambert in preparing the annual budget as well as presenting it to the County board of supervisors. Furthermore, as AHA she has primary responsibility for managing the various grant monies earmarked for environmental services within Dubuque County.

The Union cites *City of Eagle Grove and Teamsters Local 238*, PERB #8459 (filed April 16, 2012), in support of its argument that the AHA is not a "first assistant." In *City of Eagle Grove*, the PER Board concluded that Eagle Grove's assistant police chief was not excluded from the Bargaining unit. However, *City of Eagle Grove* is distinguishable because in that case, the PER Board expressly found that the employer had failed to provide sufficient evidence to establish that the assistant chief of police aided the chief of police in the chief's managerial responsibilities to a greater extent than that of any other employee in the police department. *Id.* at 12. The instant facts are distinguishable because as AHA, Brimeyer not only manages and enforces the

environmental health services in Dubuque County, this ALJ has found that she directly assists her executive director to a greater extent than that of any other health department employee.

In sum, this ALJ concludes that Brimeyer, in the performance of her duties as AHA, is a “first assistant” to executive director Lambert and excluded from the Bargaining unit as provided by Iowa Code section 20.4 (2).¹

Proposed Order

The bargaining unit previously determined in PERB Case No. 7347 (filed Nov. 9, 2006) and the certification of Teamsters Local Union No. 120 shall be clarified to provide:

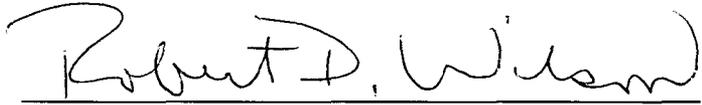
INCLUDED: Offices of the Auditor; Recorder; Treasurer; Board of Supervisors; County Library; Micro-film; Building Maintenance; Zoning; Clerical employees of the County Attorney; Health Department; and General Relief and County Conservator.

EXCLUDED: Probation; Sheriff; City Assessor; County Assessors; Professional; Supervisory; Directors; Clerk of District Court, Assistant Health Administrator, and those excluded by Iowa Code section 20.4.

¹ In *City of Estherville, supra*, the PER Board expressly did not reach the question of whether the Library board, rather than the City of Estherville, was the proper public employer of the assistant Library director. Exclusion from the bargaining unit would have resulted if the City were not the proper employer of library employees. *Id.* at 3. In the instant case, post-hearing the County briefly raised a similar argument, namely, that the County health department should be considered to be the AHA’s public employer. However, similar to the PER Board’s ruling in *City of Estherville*, this ALJ need not decide whether the County health board or the health department is the proper public employer.

So ordered.

DATED at Des Moines, Iowa, this 12th day of May, 2014.

By: 
Robert D. Wilson
Administrative Law Judge

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ASSISTANT HEALTH ADMINISTRATOR – HEALTH DEPARTMENT

GENERAL DEFINITION OF WORK:

Performs complex grant applications and submissions, grant reporting, and maintains yearly training, continuing education (CEUs) and certifications to perform water sampling, septic pumper inspections, Quality Improvement, SharePoint and required grant rules and regulations. Must be very knowledgeable of Environmental issues and do inspections and maintain certifications as required by State of Iowa. Must be very knowledgeable of Public Health issues and maintain certifications as required by State of Iowa.

Limited supervision may be exercised over subordinate clerical personnel.

ESSENTIAL FUNCTIONS:

Must be certified in water testing (Mandated by State of Iowa);

Must successfully complete the Kirkwood Community College Microbiology Workshop: Coliform Analysis Certification Program or a comparable State of Iowa approved program;

Must be proficient with all State electronic water reporting programs and grant reporting programs and complete required State Training;

Responsible for Bi-Annual Laboratory Certification;

Must attend, pass, and be certified (12 CEU's per year) in Environmental Training Courses as outlined by the State of Iowa;

Must be knowledgeable of Septic Installations and Well Installations and perform inspections;

Must be certified to do septic pumper inspections and required reporting mandated by State of Iowa;

Must follow-up on septic and well complaints and take corrective action if needed;

Responsible for Grants-to-Counties Program and must compile a yearly work plan to the State of Iowa;

Must meet requirements to be a member of the State of Iowa Quality Improvement Champion Program;

Responsible for Grant Applications and Submissions and be knowledgeable of the State of Iowa SharePoint System;

Must maintain and provide documentation for yearly State audits of Environmental and Public Health Grants and must be present for State audits as required;

Must be certified in all FEMA required and Advanced Incident Command Education Seminars as required by Homeland Security;

Must be available 24/7 to respond to Health Alert Network (HAN) alerts via computer and mobile devices as outlined by Homeland Security;

Must enforce county ordinances that relate to the Health Department;

Must attend State and Local Meetings as required;

Act as Board of Health Secretary and must attend bi-monthly Board of Health (BOH) Meetings and take directives issued by BOH Members;

Work closely with the Board of Health and Public Health Subcontracting Agencies;

Must serve as back up as needed for Health Administrator;

Perform other duties in the Health Office as required.

KNOWLEDGE, SKILLS AND ABILITIES:

Thorough knowledge of Environmental Issues and Public Health. Must be proficient with electronic State reporting programs (SharePoint; Electronic Environmental Water Submission Program; Well Permitting Program; Septic Program; and Homeland Security Response Program). Must be pleasant and professional when dealing with the public. Must possess good communication skills. Must have and maintain proper certifications for well water testing, both public and private supplies. Must maintain effective working relationships with other associates and subordinates. Must successfully complete the Kirkwood Community College Microbiology Workshop or a comparable State of Iowa approved program.

EDUCATION AND EXPERIENCE:

Any combination of education and/or experience equivalent to graduation from a high school or technical school. Must successfully complete the Kirkwood Community College Microbiology Workshop or a comparable State of Iowa approved program. Must hold certifications in lab and water testing and Homeland Security as required by State of Iowa and Homeland Security. Must be proficient in State Computer Programs for mandated State and Federal reporting guidelines.

PHYSICAL REQUIREMENTS:

The successful candidate must be able to lift a minimum of 20 pounds, to climb stairs, to squat and stoop, to be on his or her feet for a minimum of one hour, to sit in the same position for

extended periods of time, and to reach above the head all with or without reasonable accommodation.

SPECIAL REQUIREMENTS:

Must possess a valid driver's license. Must possess certifications as required by State of Iowa and Homeland Security. Must attend required State and Federal Training Seminars and Environmental Seminars, which may require use of personal vehicle for official business and possess appropriate auto liability insurance. Criminal history background check will be required.

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