

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)
CEDAR RAPIDS COMMUNITY SCHOOL)
DISTRICT,)
Public Employer,)
and)
SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL #199,)
Certified Employee Organization/)
Petitioner.)

CASE NO. 8706

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PUBLIC EMPLOYMENT
RELATIONS BOARD

PROPOSED DECISION AND ORDER

On November 4, 2013, the Service Employees International Union, Local #199, (SEIU) filed a petition for amendment of bargaining unit pursuant to Iowa Code section 20.13 and PERB rule 621-4.6(20). In its petition, SEIU proposes to amend a maintenance bargaining unit of Cedar Rapids Community School District employees to specifically include the job classification of “electrical technicians.” SEIU is currently certified as the bargaining unit’s representative for the purposes of collective bargaining. The District resists the petition and asserts that the position at issue is a supervisor of the public employer or managerial and thus excluded from chapter 20’s coverage. The District further asserts that if the electrical technician position is not excluded from chapter 20’s coverage then it does not belong in the existing maintenance unit because the position is professional or because the technician does not share a community of interest with the other unit employees.

By order, dated November 5, 2013, the Public Employment Relations Board (PERB or Board) set the matter for hearing on December 3, 2013. At the District's request, the hearing was continued and held on January 8, 2014. General Counsel Jim Jacobson appeared for SEIU and Attorney Jill Cirivello appeared for the District.

Pursuant to Iowa Code section 17A.14(4), official notice was taken of the original PERB certification and bargaining unit description and all subsequent amendments in PERB Case Nos. 11, 4777, 5937, and 6136. The parties submitted briefs, the last of which was filed on February 26, 2014.

FINDINGS OF FACT

Cedar Rapids Community School District is a public employer within the meaning of Iowa Code section 20.3(10) and the Service Employees International Union, Local #199 is a certified employee organization within the meaning of Iowa Code section 20.3(4). The District employs approximately 2,800 employees. Three hundred employees are divided into what the District refers to as "meet and confer" groups: administrative, non-administrative, and childcare. The other employees are organized for the purposes of collective bargaining into eight bargaining units generally described as: bus drivers, carpenters, food and nutrition, painters, teachers, teacher associates, secretarial and clerical, and maintenance. SEIU represents the latter two units for the purposes of collective bargaining and the first six units are represented by other unions.

SEIU seeks to amend the bargaining unit described as maintenance. The unit was originally determined and SEIU certified to represent it in 1975, PERB

Case No. 11. The unit was amended once in 1998, PERB Case No. 5937, and is the present composition for which SEIU seeks amendment to add “electrical technicians:”

INCLUDED: All maintenance and grounds personnel, security officers, utility pesticide applicators, distribution specialists, printing department employees, and mechanics employed by the Cedar Rapids Community School District.

EXCLUDED: Part-time bus drivers, temporary employees, administrative assistants, directors and their assistants, coordinators and their assistants, and all other persons excluded by [s]ection 20.4 of the Code of Iowa.

The District’s maintenance mechanic electricians are included in this bargaining unit. At the time of hearing, Donna Sedlacek was the only person working as a maintenance mechanic electrician. When Sedlacek began that position seven years ago, she worked with two other maintenance mechanic electricians, John Merck and George Willard. All three were in the bargaining unit. Merck was a licensed master electrician and the District’s senior electrician. Until Merck’s retirement, Sedlacek and Willard had apprentice electrician licenses and could work on any equipment and install new equipment under Merck’s direction. Merck trained them on compliance with national electrical code. Merck maintained and repaired the District’s electrical system.

Another licensed master electrician, Jeff Rowry, worked for the maintenance department, too, but his job title and employment duration were not provided for the record. Sedlacek’s immediate supervisor, Bob Jones, is a journeyman electrician for the District and belongs to the bargaining unit. His

job title and employment duration were also not provided for the record although it seemingly appears he still works for the District and supervises Sedlacek.

After Merck retired and the District discontinued the apprenticeship program, Sedlacek's license changed to unclassified, which allows her to work only on existing electrical equipment. Sedlacek currently repairs and maintains the District's electrical system and works on such items as kilns, light sensors, exit and ceiling lights, and fire alarm systems. She took over the repair and maintenance of the auditorium lighting system, sound systems, intercoms, speakers, and related equipment when another employee retired in 2012. Sedlacek works with vendors in resolving equipment issues and ordering parts. Currently, she checks with Jones for approval before contacting a vendor, but previously no approval was necessary. Sedlacek has trained district personnel on electrical safety and maintenance practices. She reads blueprints and understands the overall electrical system. She assisted with the District's installation of fiber optics by identifying the location of the electric, gas, and geothermal in each District building.

Willard retired in September 2013 and left Sedlacek as the only District maintenance mechanic electrician. On September 17, 2013, the District posted an opening for maintenance mechanic electrician. SEIU Local President Joe Mullin believed the starting wage posted should have been higher under the collective bargaining agreement and notified the District's building and grounds manager, Rob Kleinsmith, of this error. Accordingly, the same day, the District reposted the position at the higher starting wage as Category "F" rather than

Category "E" of the collective bargaining agreement's salary schedule. The position was posted September 17, 2013 to September 23, 2013. The posted job description provided, in relevant part:

MAINTENANCE MECHANIC Electrician

PRINCIPAL DUTIES: Under the direction of the Maintenance Mechanic Chief, the Maintenance Mechanic is responsible for the following:
Provide support and oversee the physical plant electrical systems for safe operation and repair.
Applicant will install and repair light fixtures, outlets, breaker panels, fire alarms system, and other electrical components.
Provide support for future renovation projects ensuring products and systems meet district requirements.
Ensure all electrical components and repairs meet current code and safety requirements.
Other duties as may be assigned.

CLASSIFICATION:
Category "E" of the salary schedule for Building & Grounds Employees.

ESSENTIAL SKILLS/APTITUDES/REQUIREMENTS:
To perform this job successfully an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge; skill and/or ability required but are not all-inclusive. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.
Applicant must have State of Iowa Master Electrical license.
5 years experience in physical plant electrical systems.
Certificate of completion of apprenticeship program or trade school classes in electrical work.
Skill in installation of new and the maintenance of all types of electrical systems.
Ability to work and read sketches, blueprints, specification manuals from oral or written instructions.
Experience in applicable electrical city and state electrical codes.
Knowledge of the hazards and safety precautions of the trade.
Reports to work as scheduled on a regular and reliable basis with a strong attendance history.
Must be able to pass the Physical Capacity Profile tests.

LANGUAGE SKILLS:
Ability to read, analyze, interpret, and implement ideas contained in technical documents, reports, regulations, etc.
Ability to assist staff, community members, and all who have inquiries in seeking information.

Ability to establish and maintain effective working relationships with administrators, colleagues, community members, staff and students.
Ability to speak clearly and concisely both in oral and written communication.

MATHEMATICAL SKILLS:

Ability to perform mathematical functions such as addition, subtractions, multiplication, division, percentages, decimals and fractions.

REASONING ABILITY:

Ability to solve problems effectively. Ability to interpret a variety of instructions furnished in written, oral, diagram or schedule form.

OTHER SKILLS AND ABILITIES:

Ability to perform duties with awareness of all district requirements and Board of Education policies.

Responsible attitude towards job and fellow workers.

Capable of representing the school District in a professional manner, which includes but is not limited to confidentiality, communication skills, and ability to present a professional personal image.

Ability and knowledge to operate equipment, tools and vehicles necessary in the satisfactory pursuit of assigned duties.

Valid Iowa State Driver's license with a record that's satisfactory to the District and the District's insurance carrier.

Must be willing to work under adverse weather conditions.

Computer literacy required.

Ability to work under pressure with frequent interruptions.

Ability to problem solve independently and with others.

Ability to work independently.

PHYSICAL DEMANDS:

Must be in excellent physical condition.

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job.

Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to stand; walk; use hands and fingers to handle and/or feel objects, tools or controls; and talk and hear.

Specific vision abilities required by this job include close vision, color vision and the ability to adjust focus while working with equipment, computers, written materials, reports, assessment data, etc.

Applicant must be able to lift 50 lbs frequently.

The job may require exerting up to 100 pounds of force occasionally.

Sufficient physical strength and ability to perform manual labor and to work from ladders and scaffolding.

Required	GED
Education level:	High School diploma

Required Skill Sets:

(All listed items are required to qualify for this position).

State of Iowa Master Electrician License

Salary: Hourly . . .

Salary Range: \$19.25 per hour . . .

No one applied for the position during the pendency of its week-long posting that ended on September 23, 2014. In a lengthy meeting on September 27, 2013, Mullin and Devin Mahaffey, a SEIU staff representative, discussed the maintenance mechanic electrician position with the District's Human Resources (HR) Director, Jill Cirivello, and its lead HR specialist, Sue Wilber. The District representatives indicated that they were changing the job description and moving the position out of the bargaining unit. The explanation they provided was that the District wanted to pay the position a higher salary, but could not increase the pay and still afford the benefits that unit employees received under the collective bargaining agreement. When the SEIU representatives maintained that the position should be included in the bargaining unit as it had in the past, Cirivello claimed that she would just add supervisory duties to the technician's position to make it supervisory. The SEIU representatives were told to contact Kleinsmith for a copy of the new job description for what the District retitled as, "Electrical Technician" (electrical technician or technician) in lieu of maintenance mechanic electrician.

On October 2, 2013, Kleinsmith emailed his proposed electrical technician job description to Mullin. The technician's job description varied only slightly from the maintenance mechanic electrician's job description that had been

posted. It contained the same substantive duties, skills and requirements although organized differently and reworded in a more specific manner:

Electrical Technician

...

ESSENTIAL DUTIES:

Under the supervision of the Manager of Buildings & Grounds the Electrical Technician will [be] responsible for the following:

Monitor & repair the electrical distribution system for all district facilities.

Trouble shoots electrical and pneumatic control components of motor circuits and high voltage switch gear.

Assume responsibility for the safe condition of light fixtures, electrical apparatus, wiring, and similar electric elements for district.

Respond to work order requests as it relates to electrical deficiencies.

Install and maintain energy conservation concepts.

Provide training to district staff for proper safety methods and procedures in small scale electrical repair work.

Perform Preventive Maintenance on electrical apparatuses as well and fire alarm systems.

Repair of the district[']s fire alarm systems.

Perform other duties as assigned by Buildings and Grounds Manager.

...

ESSENTIAL SKILLS/APTTITUDES:

Strong working knowledge of electrical equipment and proper repair technics.

Experienced in safe electrical practices.

Familiarity with tools associated with electrical maintenance and repair.

Capable of representing the school District in a professional manner, which includes but is not limited to confidentiality, communication skills, and ability to present a professional personal image.

Must be able to successfully use, maintain, and manipulate Microsoft Office professional Software (Excel, Outlook, Access, Power Point and Word).

Ability to function with [] minimal supervision-self motivated.

Demonstrates leadership skills, organizational ability, and prioritizing skills.

Good listening skills with the ability to negotiate to resolve differences.

Possess a valid Iowa Driver's license and a driving record satisfactory to the District's insurance carrier.

Ability to interpret building blueprints and specification books.

Able to adhere to District policies and department work rules.

Able to follow written and oral instructions.

Excellent attendance and work history.

EDUCATION:

High School Diploma or equivalent.

Certificate of completion of apprenticeship program or trade school classes in electrical work.

QUALIFICATION REQUIREMENTS:

To perform this job successfully an individual must be able to perform each essential duty satisfactorily. The requirements listed are representative of the knowledge, skill and/or ability required but are not all-inclusive.

Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

Current Master Electrician's license or equivalency.

Five years experience in industrial/commercial maintenance of electrical building components.

NICET Certified.

LANGUAGE SKILLS:

Ability to read, analyze interpret, and implement ideas contained in technical documents, reports, regulations, etc.

Ability to assist staff, community members, and all who have inquiries in seeking information.

MATHEMATICAL SKILLS:

Ability to perform mathematical functions such as addition, subtractions, multiplication, division, percentages, decimals and fractions.

REASONING ABILITY:

Ability to solve problems effectively. Ability to interpret a variety of instructions furnished in written, oral, diagram or schedule form.

OTHER SKILLS AND ABILITIES:

Ability to establish and maintain effective working relationships with administrators, colleagues, community members, staff and students.

Ability to speak clearly and concisely both in oral and written communication. Ability to perform duties with awareness of all district requirements and Board of Education policies.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to stand[,] walk[,] use hands and fingers to handle and/or feel objects, tool or controls[,] and talk and hear. The employee will frequently use hands and bend or twist at the neck and trunk more than the average person while performing the duties of this job. Specific vision abilities required by this job include close vision, color vision and the ability to adjust focus while working with equipment, computers, written materials, reports, assessment data, etc.

This position will require working on roof tops of buildings, applicant must be able to work in high locations and have the ability to work off] a ladder, scaffolding and or a lift.

...

Salary: Hourly

Salary Range: \$24.33 per hour

The technician job description did not list any required certifications or endorsements. The requirements, “Essential Skills/Aptitudes,” “Language Skills,” “Mathematical Skills,” “Reasoning Ability,” “Other Skills,” and “Physical Demands,” were substantively the same as or verbatim from the maintenance mechanic electrician job description. The posting provided that the technician would report to the building and grounds manager rather than the maintenance mechanic chief to whom the maintenance mechanic electricians report.

Sometime in October, Wilber used the “Decision Band Method” to determine the technician’s placement in either one of the District unorganized meet and confer groups or one of the organized union-represented bargaining units. The Decision Band Method requires an examination of the employee’s duties, levels of responsibilities, supervisory duties, discretion in carrying out responsibilities, and participation in policy making. Wilber concluded that the position should be placed in the non-administrative meet and confer group rather than the maintenance unit represented by SEIU or any of the other seven units organized and represented for the purposes of collective bargaining. Although Wilber testified that the technician’s placement was due to its supervisory role and responsibilities for training, preventive maintenance, and policy making, she could not provide specifics or the manner in which the technician would carry out those duties.

SEIU and District representatives met on October 7, 2014 to discuss the technician position. At this meeting, Cirivello and Kleinsmith discussed their expectations that the technician would possess a master electrician's license and have a higher level of training, knowledge, and skill level to evaluate the District's electrical needs. Thus, they wanted to pay the technician at a higher salary than the maintenance mechanic electrician, but could not afford to also pay the benefits pursuant to the parties' collective bargaining agreement. The District representatives felt the expected higher skill level justified the position's unit exclusion and gave no other reason for its exclusion.

The District posted the technician's job description and opening from October 21, to November 22, 2014. The posted job description contained the same provisions as the proposed description sent to SEIU except for the following two changes: 1) the District added as an essential duty, "Supervise electrical projects and repairs for the District; and 2) the District replaced the requirement of "NICET Certified" with "NICET Certified for Fire Alarm repair."

On December 10, 2013, the District hired Kevin Wood as the electrical technician. Wood does not have a master's electrician license, but does have a journeyman's license, which is one step below the master's license. As of the date of hearing, Wood had worked alongside Sedlacek and done electrical work on emergency lighting, outlet boxes, and power strips. He had also provided his recommendations on arc safety to Kleinsmith for policy making consideration.

Kleinsmith testified that a big expectation is that the electrical technician has the ability to supervise electrical systems and train others on safe electrical

practices and ways to run electrical. Kleinsmith expects Wood to evaluate the District's overall electrical system, evaluate work orders and work on an independent basis. Kleinsmith testified of his expectations for Wood: long-term goals are for Wood to have input on electrical cost and provide some direction to other employees on electrical issues; Wood may have responsibility to assist in evaluating the work of others in terms of a formal yearly evaluation; and that ". . . [Wood] could very well potentially be part of an interview team that will be interviewing potential employees down the road." Although Kleinsmith testified that he needed the technician's assistance with supervising and evaluating other employees, Kleinsmith did not provide specifics or concrete examples of the manner in which the technician carried out those duties.

CONCLUSIONS OF LAW

The issue presented is whether the electrical technician should be included in the bargaining unit of District employees referred to as maintenance. The District asserts that the technician is a managerial or supervisory employee and thus, is excluded from bargaining unit eligibility as a "representative[] of a public employer" within the meaning of Iowa Code section 20.4. If it is determined that the technician is bargaining unit eligible, the District alleges that the technician does not share similar interests with the maintenance unit employees. Additionally, the District alleges that the technician is a "professional employee" Thus, on these two grounds, the District argues that the electrical technician should not be included in the SEIU-represented maintenance unit of District employees.

In contrast, SEIU contends that the electrical technician is neither a managerial nor a supervisory employee and is eligible for bargaining unit inclusion. SEIU alleges that the District's maintenance bargaining unit is an appropriate unit for the technician and thus, the unit should be amended to include the technician in its composition of bargaining unit employees.

I. Exclusion from chapter 20's Coverage.

Iowa Code section 20.4 excludes certain types of employees from the provisions of chapter 20, providing in relevant part:

20.4 Exclusions.

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.

Iowa Code chapter 20 is interpreted to provide broad coverage for those eligible and the section 20.4 exclusions are read narrowly to promote the statute's broad application. *IA Ass'n of Sch. Bds. v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987); *Black Hawk Cnty. & Commc'n Workers of Am., Local 7170*, 05 PERB 6702 at 9. The party asserting the applicability of a section 20.4 exclusion must establish that the exclusion applies. *City of Cedar Falls & Cedar Falls Firefighters Ass'n, Local 1366*, 06 PERB 6868 at 21; *Iowa City & AFSCME, Local 183*, 02 PERB 6353 at 5.

A. Exclusion/Supervisory Employees.

The District contends that the electrical technician is a supervisory employee and thus, a representative of a public employer and ineligible for

bargaining unit inclusion. Iowa Code section 20.4(2) defines supervisory employee as follows:

...
“*Supervisory employee*” means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, 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.
...

This language is nearly verbatim from the National Labor Relations Act at 29 U.S.C. § 152(11). In its exclusion of supervisors from collective bargaining, the U.S. Senate committee explained:

[T]he committee has not been unmindful of the fact that certain employees with minor supervisory duties have problems which may justify their inclusion [within the protection of the ACT]. It has therefore distinguished between straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such action.

City of Davenport v. PERB, 264 N.W.2d 307, 313 (Iowa 1978) (quoting S.Rep.No.105, 80th Cong., 1st Sess., p.4 (1947)).

Pursuant to the statutory definition of “*supervisory employee*,” the employee’s authority to accomplish any one of the enumerated functions listed in section 20.4 justifies a finding of supervisory status. *IA Dep’t of Pers. v. PERB*, 560 N.W.2d 560, 562 (Iowa 1997); *City of Davenport*, 264 N.W.2d at 314. Moreover, for each such function, the statute requires that a supervisor 1) have authority 2) to use independent judgment 3) in performing such supervisory functions 4) in the interest of management. *City of Davenport*, 264 N.W.2d at

314. All of these requirements must be established for any one function to rise to the level of supervisory status.

Along with a narrow interpretation to be given the supervisory exclusion, there are a number of guiding principles that apply when reviewing an employee's position, duties and responsibilities to determine whether a supervisory function is present. Weight is given to substance over form of the position. The job title has little bearing. "It is the function rather than the label which is significant." *Id.* Documented authority, such as a written job description, is insufficient without evidence of the exercise of the alleged supervisory authority. *City of Cedar Falls*, 06 PERB 6868 at 21. The actual supervisory authority must be "visible translated into tangible examples . . ." *City of Davenport*, 264 N.W.2d at 314. ". . . PERB examines the record before it for evidence that such [supervisory] authority exists in reality, not merely on paper." *City of Des Moines & Des Moines Gold Braid Org.*, 09 PERB 7933 (09 H.O. 7933 at 67). The employee's regular, not occasional or temporary, functions and responsibilities are determinative. *City of Davenport*, 264 N.W.2d at 315. "Authority to perform one of the enumerated functions is not supervisory if the responsibility is routine or clerical." *Id.* at 314. "Repetitive or rote tasks are not considered supervisory." *Id.* at 314. Directing and assigning work by a skilled employee to a less skilled employee does not involve the use of independent judgment when it is incidental to the application of the skilled employee's professional knowledge. *Id.* at 314. Further, for supervisory status to

exist, the position's responsibilities must substantially identify the employee with management. *Id.* at 314.

Supervisory status is a fact question involving a "case-by-case approach in which the agency gives practical application of the statute to the infinite and complex gradations of authority which may exist in employment." *Id.* at 313. Thus, each case is dependent on the record developed by the parties and its absence or presence of evidence establishing actual supervisory authority.

Based on the record in this case, the District has failed its burden of establishing that the electrical technician possesses the authority to accomplish any one of the enumerated supervisory functions listed in section 20.4. The District claims that the electrical technician is a supervisor because the person will "[s]upervise electrical projects and repairs for the District." ". . . provid[e] training and assum[e] responsibility for the safe condition of electrical needs of the District." The District asserts that this includes the supervision and direction of others, training of other employees, assistance with hiring, and involvement with employee evaluations. The District's blanket assertions seemingly suggest that the electrical technician has the supervisory authority to hire, promote, assign, or reward other public employees, or the responsibility to direct them, or effectively to recommend such action on any of the preceding. However, the evidence is insufficient to find that the electrical technician possesses the authority of any one of these supervisory functions.

Hire, promote and reward

The District claims that the electrical technician's future involvement in hiring teams and assistance with evaluations sufficiently establish its supervisory authority. Although the District does not articulate its claims as such, the District seemingly suggests that the electrical technician has the authority to "effectively recommend" actions to hire other employees through the technician's role in hiring teams and "effectively recommend" promotion or reward of other employees by the technician's assistance with employee evaluations.

The supervisory authority to "effectively recommend" within the meaning of section 20.4(2) is a recommendation which 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, *Davenport Cmty. Schs. & Davenport Educ. Ass'n*, 75 PERB 72 at 8. A mere showing that the recommendation was followed does not make the recommendation "effective" if there is an independent review by upper management. *City of Davenport*, 264 N.W.2d at 321; *see, e.g., City of Dubuque & Dubuque Policemen's Protective Ass'n*, 89 PERB 3317 at 22.

Here, the record is insufficient to find that the electrical technician makes "effective recommendations" to hire, promote, or reward other employees. There is some evidence through testimony that the technician "may" participate in hiring and "potentially" assist with employee evaluations. However, the record is absent of tangible examples to demonstrate the technician's participation in an interview team or the technician's related role in hiring. Similarly, the record is

absent of tangible examples to demonstrate the technician's assistance with employee evaluations or the technician's related role in the promotion or reward of other employees. In fact, the evidence indicates only a future possibility that the electrical technician will participate in hiring or assist with employee evaluations. The building and grounds manager testified that the electrical technician could very well "potentially" be a part of the interview team and "may" assist with evaluations. The mere possibility that the technician participates in these matters and may possess the supervisory authority to hire, promote or reward at some future time is irrelevant. The supervisory authority must exist in reality and is most persuasively demonstrated by tangible examples of its exercise.

The Court's observation that the section 20.4 exclusions are to be read narrowly further supports our tendency to reject a claim of supervisory status unless it is persuasively demonstrated by the record.

City of Cedar Falls, 06 PERB 6868 at 34 (quoting *IA Ass'n of Sch. Bds. v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987)).

In this case, the record is absent of tangible examples or other persuasive evidence of the technician's possession of the authority to hire, promote or reward other public employees or to effectively recommend such actions. Thus, the District failed to establish that the electrical technician is a supervisor based on the technician's alleged authority of any one of these claimed supervisory functions.

Direct and Assign

The District alleges that, in supervising electrical projects and training others on electrical matters, the electrical technician will direct and assign other public employees. While the electrical technician may supervise third-party contractors for electrical projects, the record is absent of tangible examples or any other evidence of the technician directing and assigning other District employees in these matters.

The District seemingly suggests that the technician assigns and directs other District employees by virtue of the technician's responsibilities and electrical expertise. Contrary to the District's position, the record does not support a finding that the electrical technician is a supervisor on this basis. Rather, the record warrants a finding, based on the technician's level of responsibility and expertise, that the electrical technician is a "leadman" rather than a supervisor.

"Leadman" is typically the most experienced employee who works alongside and directs a small group of employees. *City of Independence & Teamsters, Local 844*, 86 PERB 2998 at 9. The critical test is whether the direction of the work is routine in nature and does not call for frequent exercise of independent judgment or managerial discretion. *Id.* The directing and assigning of work by a skilled employee to a less skilled employee does not involve the use of independent judgment when it is incidental to the application of the skilled employee's technical or professional know-how. *City of Davenport*, 264 N.W.2d at 314. Further, the responsibility to direct must be substantial and pervasive enough to

make the employee a part of management, not simply a leadman or straw boss. *Id.* at 322 (quoting *NLRB v. Harmon Indus., Inc.*, 565 N.W.2d 1047, 1051 (8th Cir. 1977)).

In this case, the record is insufficient to find that the electrical technician assigns or directs other District employees in a manner that requires independent judgment and substantially identifies the electrical technician with the District. The District's requirements, responsibilities and duties for the technician are almost identical to those of the maintenance mechanic electrician. While the technician has a journeyman license and is responsible for the District's electrical system and the training of other District employees, there are other District employees who have had the same or greater responsibilities or expertise. The tangible examples demonstrate that there are past and present District employees (maintenance mechanic electricians and other employees) who have had greater expertise by holding a master electrician's license or who have assumed equal responsibility for all new and existing electrical equipment or who have similarly trained other district employees on electrical maintenance and safety. Although the technician may be called upon to advise other employees regarding electrical projects, maintenance and safety, the technician's role in this regard is routine, incidental to the technician's professional know-how, and does not require the use of independent judgment. The tangible examples provided through Sedlacek's testimony demonstrate that the technician works alongside the maintenance mechanic electrician. As the electrical technician job description provides, "This position will require working on roof tops of buildings,

applicant must be able to work in high locations and have the ability to work off[ff] a ladder, scaffolding and or a lift.” As the record reflects, the technician is a leadman rather than a supervisor. Thus, the District has failed to establish that the electrical technician possesses the authority to assign or direct other public employees.

In summary, the District has failed to establish that the electrical technician possesses the supervisory authority to hire, promote, assign, or reward other public employees, or the responsibility to direct them, or effectively to recommend such action on any of the preceding. The technician is not excluded from bargaining unit eligibility as a supervisory employee.

B. Exclusion/Managerial Employees.

The District also argues that the electrical technician is excluded from bargaining unit eligibility as a managerial employee because of the technician’s involvement with the District’s electrical policies and the potential conflict that may arise due to the technician’s role in the electrical system oversight and supervision and evaluation of other employees.

For some time now, the Board has recognized that certain employees are excluded as “representatives of a public employer” within the meaning of section 20.4(2) on the basis of their so-called “managerial” status. *See, e.g., City of Eagle Grove & Teamsters Local 238*, 12 PERB 8459 at 10-11; *Council Bluffs Cmty. Sch. Dist. & Commc’n Workers of Am., Local 7103*, 03 PERB 6514, 6516 & 6536 at 21-25 (*affm’d Council Bluffs Cmty. Sch. Dist. v. PERB*, Case No. CVCV086308 (Pottawattamie Co. 2004)); *Davenport Cmty. Schs.*, 75 PERB 72 at 15-17.

Although “managerial employees” are not specifically listed in section 20.4, the exclusion is recognized for employees who are significantly involved in the promulgation and implementation of policy and aligned with management such that their status may cause a potential conflict of interest with the employer or other employees if the managerial employee is placed in the same bargaining unit as the other employees. *See, e.g., City of Eagle Grove*, 12 PERB 8459 at 10-11; *City of Waterloo & Commc’n Workers of Am., Local 7175*, 08 PERB 7377 at 9; *Dickinson Cnty. Memorial Hosp. & Dickinson Cnty. Memorial Hosp. Prof’l Nurses Ass’n*, 85 PERB 2759 at 3-4; *City of Onawa & AFSCME Council 61*, 12 H.O. 8505 at 17. The National Labor Relations Board (NLRB) also recognized the exclusion even though the National Labor Relations Act did not exempt managerial employees by its specific provisions. PERB has generally followed the NLRB conjunctive test and considered the following to determine the managerial status of an employee:

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.

Black Hawk Cnty. & Commc’n Workers of Am., Local 7170, 05 PERB 6702 at 10; *City of Farley & Gen. Drivers & Helpers Union, Local No. 421*, 95 PERB 5220 at 11; *Davenport Cmty. Schs.*, 75 PERB at 15. Each case requires an evaluation of

the totality of facts and circumstances. *Davenport Cmty. Schools*, 75 PERB 72 at 17.

Here, under the two-part analysis, the totality of facts and circumstances do not indicate that the technician is a managerial employee. As to the first part of the NLRB analysis, the record is insufficient to find that the electrical technician is so closely aligned with the District that the technician's placement in the bargaining unit may cause a potential conflict of interest with management or other employees. There is no persuasive evidence to support the District's assertion that the technician will have a conflict of interest with bargaining unit employees as a result of the technician's role in evaluating employees and overseeing electrical projects. There is only a possibility that the technician "may" assist the building and grounds manager in future evaluations of other employees. Thus, it is difficult to ascertain what conflict could arise when it is not known when and how the technician would participate in the evaluation process of other employees.

It is also speculative at best that a conflict of interest could arise with regard to the technician's oversight of the electrical system. There is no evidence to demonstrate that other employees will be adversely impacted by the technician's responsibility for the electrical system, such as in staffing or assignment changes. While there could be conflict that results from the technician's guidance and advice as a lead worker to other employees, these differences are not necessarily a "conflict of interest" within the meaning of the managerial test. *See, e.g., West Harrison Education Ass'n & West Harrison Cmty.*

Sch. Dist., 04 PERB 6751 at 11 (conflict in this context is not unlike that which occurs between employees on a day-to-day basis rather than the managerial “conflict of interest” that constitutes a division of loyalty between management and the bargaining unit employees).

As to the second part of the NLRB analysis, the evidence is unpersuasive that the electrical technician is substantively involved in the District’s electrical system policies to the extent contemplated by the NLRB managerial analysis. Managerial employees must be significantly, and not peripherally, involved in formulating, determining and effecting the employer’s policies and programs. *See, e.g., Davenport Cmty. Sch. Dist.*, 75 PERB 72 at 17; *State of IA & SPOC*, 93 PERB 4600 at 20-21. Here, in the one example given, the technician’s suggestions on electrical arc were subject to review by the building and grounds manager and treated as a recommendation. This example does not demonstrate the technician’s significant involvement in the formulation, determination and implementation of the District’s policies.

The record does not support a finding that the electrical technician is aligned with the District, has a potential for a conflict of interest, and formulates, determines and effectuates District policy. Thus, the District has failed to establish that the electrical technician is a managerial employee and excluded from bargaining unit eligibility on this basis.

II. Bargaining Unit Placement.

Having found that the electrical technician is bargaining unit eligible, the next issue is whether or not the existing maintenance unit of District employees

should be amended to include the electrical technician position. The District seemingly asserts that the technician should not be placed in the existing bargaining unit because it does not share a community of interest with other unit employees. Additionally, the District contends that the electrical technician is professional and argues that the technician's professional status precludes its inclusion in the existing bargaining unit of employees who are nonprofessional.

Considerations for appropriate bargaining unit determination are set forth in Iowa Code section 20.13, which provides:

20.13 Bargaining unit determination.

2. . . . In defining the unit, 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.

4. Professional and nonprofessional employees shall not be included in the same bargaining unit unless a majority of both agree.

A. Unit Placement/Community of Interest

The District seemingly contends that, under the criteria listed in section 20.13(2) for unit determinations, the technician does not share a community of interest with the SEIU-represented unit of maintenance employees. The District alleges that the technician is a supervisor and managerial employee with greater responsibility and expertise, all of which differentiate the technician from the maintenance unit employees. Further, the District alleges that the Decision Band method indicated that the proper placement for the technician was the District's non-administrative meet and confer group.

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. v. PERB*, 404 N.W.2d 140, 143 (Iowa 1987). 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. v. PERB*, 424 N.W.2d 427, 431 (Iowa 1988); *City of West Des Moines & West Des Moines Ass'n of Prof'l Firefighters, Local 3586*, 10 PERB 8043 at 14; *State of IA (Regents) & SEIU, Local 150*, 98 PERB 5834 at 14; *Des Moines Indep. Cmty. Sch. Dist. & Sch. Drivers Indep. Union of Des Moines et al.*, 75 PERB 21, 125 & 126 at 9-10.

In the present case, the record supports a finding that the technician shares a community of interest with the SEIU-represented maintenance employees, which warrants the technician's placement in their existing bargaining unit. For the reasons previously outlined, the technician is not a supervisor or managerial employee as alleged by the District. The evidence persuasively demonstrates that the technician is much like the maintenance mechanic electricians who are in the bargaining unit. The technician and maintenance mechanic job descriptions are almost identical. The two positions work side-by-side. Although the technician's responsibility and expertise may make it a leadman, its duties, skills, and training do not significantly distinguish

the technician from the other bargaining unit employees. The evidence demonstrates that other bargaining unit employees have had the same or greater expertise or responsibility than the technician. The technician and maintenance unit employees work in the same locations and environments and perform substantially similar work. The similarities are great and the differences slight.

The record supports a finding that the technician shares a community of interest with the District's maintenance unit of employees. Thus, the unit should be amended to include the electrical technician position.

B. Unit Placement/Professional or Nonprofessional Employees.

The District claims that the technician is a "professional employee" because the position performs work of an intellectual nature rather than routine work and oversees and develops procedures and policies, which require the exercise of discretion and judgment. The District asserts that the technician's work does not produce results of a standardized nature and that the technician's responsibilities required study in a formal apprenticeship program. The District concludes that the technician is professional and thus, cannot be in the same unit as the nonprofessional maintenance employees.

The District overlooks the provisions of Iowa Code section 20.13(4) that allow for the combined inclusion of professional and nonprofessional employees in the same unit. However, pursuant to section 20.13(4), the majority of employees must agree to the combined unit. Therefore, it is necessary to determine whether the technician is a professional employee as asserted by the District.

“Professional employee” is defined in Iowa Code section 20.3(8), which provides in part:

...

8. “Professional employee” means any one of the following:
 - a. Any employee engaged in work:
 - (1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - (2) Involving the consistent exercise of discretion and judgment in its performance;
 - (3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
 - (4) Requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

...

The employee must meet all of the listed criteria to be considered professional. *Des Moines Indep. Cmty. Sch. Dist. and Des Moines Educ. Ass’n*, 84 PERB 2498 at 12. Job titles and job descriptions are not determinative. *Id*; *Benton Cnty. and Pub., Prof’l & Maint. Emps., Local 2003*, 06 PERB 6985 at 8. Rather, professional status is determined on a case-by-case basis with review of an employee’s actual job duties, responsibilities, education and training to determine if the section 20.3(8) criteria are met. *Cedar Rapids Cmty. Sch. Dist. & Cedar Rapids Educ. Ass’n*, 86 PERB 2815 & 2818 at 9; *Broadlawns Polk Cnty. Hosp. & Prof’l Health Care Div. of Retail Clerks, Int’l Union, Local 30*, 78 PERB 1237 at 2.

The record does not support a finding that the technician’s duties and responsibilities are predominantly of an intellectual nature that involve the consistent exercise of discretion and judgment, yield results that cannot be

standardized, and require knowledge of an advance type as contemplated by section 20.3(8). Rather, the evidence indicates that the technician's duties and responsibilities are very much like the maintenance mechanic electrician's duties and are not predominantly intellectual, but are of a routine, mental, manual, mechanical or physical nature as distinguished from the predominantly intellectual nature of a professional employee's work. Although the technician's job description is not determinative, it is one of the few items of evidence regarding the technician's position and provides in part, "The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job." Thus, the essential functions are physical and not intellectual as alleged. The technician's duties do not require independent judgment. They are capable of standardized output. Past and present maintenance mechanic electricians have performed all or the majority of the technician's duties. Additionally, the technician is a journeyman electrician, which licensing and training are accomplished through an apprenticeship program—the very training specifically distinguished from a professional employee's training. Section 20.3(8) distinguishes a professional employee's training as:

knowledge of an advance type . . . customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning . . . distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

Accordingly, the technician does not meet the criteria listed in section 20.3(8). Thus, the District failed to establish that the technician is a “professional employee.”

In summary, the record supports the determination that the SEIU-represented maintenance unit is an appropriate unit for the electrical technician and should be amended to include the technician in its composition. The technician is a nonprofessional employee and no election is necessary regarding a combined professional/nonprofessional unit.

CONCLUSION

The record does not warrant a finding that the electrical technician possesses the authority of any one supervisory function or that the electrical technician is a managerial employee. The District has failed to establish that the electrical technicians are representatives of a public employer and thus, excluded from the coverage of chapter 20 and ineligible for bargaining unit inclusion. The record supports the findings that the technician is nonprofessional and the existing maintenance unit is an appropriate unit for the technician’s inclusion. Having examined the entire record, I conclude that the electrical technicians are bargaining unit eligible and the existing maintenance unit represented by SEIU should be amended to include all electrical technicians. Consequently, I propose the following:

ORDER

The petition as to the amendment of unit filed herein by Service Employees International Union, Local #199 is GRANTED.

The unit of Cedar Rapids Community School District maintenance employees currently represented by the Service Employees International Union, Local #199 (See unit history: PERB Case Nos. 11, 4777, 5937 and 6136) is amended to add electrical technicians and described as follows:

INCLUDED: All maintenance and grounds personnel, security officers, utility pesticide applicators, distribution specialists, printing department employees, electrical technicians, and mechanics employed by the Cedar Rapids Community School District.

EXCLUDED: Part-time bus drivers, temporary employees, administrative assistants, directors and their assistants, coordinators and their assistants, and all other persons excluded by Iowa Code section 20.4.

This proposed decision will become PERB's final decision 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.

DATED at Des Moines, Iowa this 19th day of November, 2014.



Diana S. Machir
Administrative Law Judge

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