STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF: LINN COUNTY, Public Employer, and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 204, Petitioner.	))))))))))	CASE NO. 8719

PROPOSED DECISION AND ORDER

On November 18, 2013, the International Brotherhood of Electrical Workers, Local 204, (IBEW) filed a unit determination/representative certification petition pursuant to Iowa Code sections 20.13 and 20.14 and PERB rules 621-4.1(20), 621-4.2(20) and 621-4.3(20). In its petition, IBEW proposes a bargaining unit of all sergeants employed by Linn County at the patrol, criminal, communications, general services, civil, and correctional center/jail divisions of the Linn County Sheriff's office and seeks certification as the bargaining unit's representative for the purposes of collective bargaining. Linn County asserts that the positions at issue are supervisors of the public employer and thus excluded from chapter 20's coverage.

By order, dated November 19, 2013, the Public Employment Relations Board (PERB or Board) set the matter for hearing, which was held on December 18, 2013. Attorney Nate Willems appeared for IBEW and Gary P. Jarvis appeared for the County. At hearing, the parties stipulated to the following bargaining unit

description in the event it is determined that the sergeants are bargaining unit eligible:

> INCLUDED: All sergeants in the patrol, criminal, communications, general services, civil, and correctional center/jail divisions of the sheriff's office.
>
> EXCLUDED: All other employees.

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 reflecting when the Linn County sergeants were once a part of a bargaining unit with county deputies and were later amended out of the unit. The parties submitted briefs, the last of which was filed on February 5, 2014.

FINDINGS OF FACT

Linn County is a public employer within the meaning of Iowa Code section 20.3(10) and has a sheriff's department that is a full service law enforcement organization with sworn and non-sworn or civilian personnel. In 1975, PERB Case No. 308, the Board approved the bargaining unit of sheriff department employees that included the deputies and sergeants. PERB certified the Staff Employees Collective Organization (SECO) to represent the unit for the purposes of collective bargaining. Through subsequent amendments (PERB Case Nos. 1494, 2019, and 4131), SECO's name changed and is now known as the Public, Professional & Maintenance Employees, #2003 (PPME). Additionally, in 1990 (Case No. 4131), the unit was amended to exclude the sergeants from the bargaining unit.

The County is currently a party to five collective bargaining agreements that cover five bargaining units of county employees, the first of which is the deputies who are represented by PPME. The four remaining bargaining units of clerical, maintenance, paraprofessional, and professional employees are represented by the American Federation of State, County and Municipal Employees (AFSCME). The sergeants do not sit on the labor relations committee that consists of representatives from management and labor.

The sergeants once again seek bargaining unit inclusion, but in a new and independent unit separate from the deputies and with bargaining representation by IBEW. PPME and the bargaining unit of deputies do not resist the sergeant's request for a separate unit with representation by IBEW.

The department is run by the sheriff and operated in a paramilitary fashion with a chain of command structured by rank. The sheriff employs 118 sworn personnel that include in descending rank: one colonel, four majors, one captain, four lieutenants, 21 sergeants, and 87 deputies. There are 65 civilian personnel that include one financial analyst, 25 clerks, six correctional officers, nine duty officers, five cooks, five nurses, one health services coordinator, three mechanics and nine communication officers.

The department is organized by function into eight divisions: (1) administration; (2) finance; (3) civil; (4) communications; (5) general services; (6) patrol; (7) criminal; and (8) the correctional center/jail. In the department's policy and procedure manual (manual), there is an organizational chart that sets out a hierarchical chain of command for each division and depicts, in descending

order of rank, the sworn officers (excluding deputies) assigned to each. The ultimate authority is the sheriff who is depicted at the top of the hierarchical chain of command and in the administration division with an administrative assistant and a chief deputy/colonel. Below administration are four majors who command all the other divisions and report to the sheriff and the chief deputy/colonel. The lesser ranked officers assigned to each division in the hierarchical chain of command are discussed below in detail for each division.

There is a picture of the "command staff" along with their respective biographies posted on the department's website. It includes the sheriff, colonel, majors, captain, and lieutenants. Sergeants and deputies are excluded. The County considers the sergeants to be "supervisors," but not part of the command staff.

As a paramilitary organization, "directives" are considered orders and the chain of command reflects the greater authority of each higher rank. Deputies cannot direct civilian personnel. Although it is asserted that sergeants can, there are limited examples to demonstrate how the sergeants do this in each division. The County considers the Sergeants "first-line" supervisors because they have the most contact working with the deputies and civilian personnel on a daily basis.

Deputies must work five years in the department before applying for promotion to sergeant. They must then take a Civil Service promotional exam and interview with the Civil Service Commission in accordance with Iowa Code chapter 341A, "Civil Service for Deputy County Sheriffs" to become eligible for

promotion. The Civil Service Commission then provides a list of up to 10 deputies to the department. Whenever there is a sergeant's vacancy and chance for a deputy's promotion, the sheriff sends the list of eligible deputy candidates to sergeants and command staff for feedback. The command staff, which does not include sergeants, interviews the eligible deputies. Ultimately the sheriff determines the deputy he will promote. Once promoted, the new sergeant receives supervisory training.

The sergeants are not on call, do not answer emails or work in any other manner while off duty. The sergeants earn overtime in accordance with the Fair Labor Standards Act (FLSA). The command staff (lieutenants and all other higher ranked officers) are FLSA exempt and do not earn overtime. They respond to department calls, answer emails, and perform other duties or tasks while off duty. Their salary is set by the sheriff. The County's board of supervisors determines the salaries of employees who are subject to the FLSA, including the sergeants and the employees in bargaining units that are subject to negotiations of their respective collective bargaining agreements.

For the most part, the department's manual provides guidance and instruction for personnel to follow for day-to-day operations. It covers generally expected conduct for what may be common occurrences for the sheriff's personnel. The "Quick Index" of the rules and regulations lists over 100 items and includes some of the following:

> "General Duties," "Reporting for Duty on Time," "Sick Leave," "Violations of Rules and Regulations," "Obeying Orders from a Superior," "Conflicting Orders," "Conduct Toward the Public," "Complaint Against Employee," "Employee Obligation to be

> Truthful," "Public Statements," "False Reports," "Making of Reports," "Courtroom Conduct," "Carrying Weapons While On-Duty," "Use of Physical Force," "Roadblock Implementation," "Shooting from a Pursuing Vehicle," "Terminating Pursuit," "Inventory of Towed Vehicles," "Search of Prisoners," "Handcuffing of Prisoners," "Use of County Property for Political Purpose," "Union Business on County Times," "Rank at Crime Scenes," and "Evidence Handling."

The manual does not cover unusual circumstances that officers may confront in law enforcement situations. For those situations, command staff is contacted for further direction.

The department's law enforcement operations are carried out in four quadrants or zones upon which the county is divided. Command staff sets minimum staffing levels and work schedules for the divisions. The schedules are posted 10 days in advance. The sergeants can approve last minute leave requests and very limited overtime for deputies, both of which must be within the confines of the collective bargaining agreement. The sergeants cannot deviate from the minimum staffing.

The County is a party to collective bargaining agreements for each unit. The collective bargaining agreement between the County and PPME (County/PPME CBA) contains provisions on a number of matters including leaves, grievance procedure, hours of work and overtime. There are three pages of overtime provisions that establish the parameters of overtime, including:

* * *

> 4. Overtime required at the end of a work shift, as a continuation of work begun on that shift, will be the responsibility of the employee or group of employees performing the work during this shift.
>
> Employees who volunteer may be called in early or held over a maximum of two (2) hours at the beginning or end of any assigned hours of work without resort to the overtime call-in procedures of

> this Article provided such overtime occurs on an in-frequent and occasional basis.
>
> * * *

With regard to the deputies' grievance procedure, the CBA provides that at the first step, the employee takes the grievance or dispute up at a meeting with the employee's immediate supervisor. The collective bargaining agreements for the other four bargaining units of county employees contain the same grievance procedure provisions. However, there is no evidence that the sergeants participate in the grievance process for employees other than deputies. There are no concrete examples of a sergeant's involvement in a deputy's first step grievance meeting or the adjustment of a deputy's grievance. There is one generalized one example from the criminal division that a sergeant/detective may tell a deputy that he would "see what he could do" regarding a union issue that arose from a crime scene investigation. Command staff considers a sergeant's recommendations on grievance issues when they affect the sergeant's division.

Disciplinary procedures are contained in the department manual. The forms of disciplinary action proscribed therein are rewards, training, counseling, and punitive action. Reward, as a function of discipline, includes employee recognition through several types of commendation. Any employee can request that another employee is recognized. The requests for deputy recognition generally originate from the sergeants who work with the deputies on a daily basis. The sergeant prepares a written request and sends it up the chain to the division commander who compiles a synopsis and gives it to the colonel. The colonel gives it to the sheriff who ultimately decides if the deputy will be formally

recognized. More often than not, the sheriff rewards a deputy whose recognition has been recommended by a sergeant.

The manual provides that counseling, as a function of discipline, can be initiated by the employee or the employee's supervisor. Counseling is considered a non-punitive form of discipline. For example, a sergeant may counsel a consistently tardy deputy. Although there was generalized testimony that the sergeants may give oral reprimands, the manual provides otherwise. The manual provides that punitive forms of discipline include oral reprimand (written), written reprimand, suspension, demotion, and termination and can only be imposed by the sheriff. If a sergeant's counseling does not correct the problem, the sergeant can refer it up the chain to the division lieutenant who in turn refers it up to either a captain or major. Command staff relies "heavily" on sergeants' recommendations regarding discipline, but ultimately the sheriff reviews the situation and determines when punitive disciplinary action will be imposed.

Although there is generalized and conclusory testimony that the sergeants possess supervisory authority, there are limited examples of the sergeants' exercise of any one of the supervisory functions and absolutely none given for some of the division sergeants. Moreover, most of the examples reflect the sergeants' limited discretion due to the paramilitary protocol and strict adherence to the chain of command. For instance, the record is replete with the patrol major's emails to the sergeants that reflect the sergeants' limited discretion on day-to-day operations. The major reminds the sergeants to contact command staff on a myriad of situations – from citizen complaints, to a tardy deputy, to

patrol car damage. To the extent there is evidence of the division sergeants' supervisory authority, it is reflected in the following division descriptions.

(1) Administration

The sheriff, chief deputy/colonel and administrative assistant comprise administration.

(2) Finance

This division provides the payroll, accounts receivable and payable processing for the department. A financial analyst is in charge and reports to the major who also commands the civil division. The analyst supervises the six clerical employees who work in this division and all the clerical employees who work in the civil and criminal divisions. The analyst approves leave requests and is responsible for other personnel matters relating to the clerical employees. There are no sergeants assigned to this division.

(3) Civil

In this division, they serve legal paperwork for the county, such as no-contact orders, original notices, and eviction notices. It operates during fixed daily hours rather than 24 hours a day/ seven days a week (24/7) basis like some of the other divisions. A lieutenant is the civil division commander and there are one sergeant, six deputies, and six clerical employees assigned there. Although the analyst supervises the clerical employees, the sergeant may instruct them on administrative duties or tasks such as when the sergeant needs a garnishment typed or a criminal file pulled.

The lieutenant and sergeant work 8 a.m. to 5 p.m., have their own offices and share a secretary. Four deputies work 9 a.m. to 5 p.m. and the other two work noon to 8 p.m. The lieutenant schedules and assigns each deputy to work in one of the quadrants ("zones" for patrol). The division does not backfill any positions if anyone is off. However, the sergeant may reassign a deputy when necessary, such as when a paper requires immediate service in another quadrant.

The sergeant and lieutenant spend the majority of their time on sheriff's sales. The lieutenant has other administrative duties as well. The deputies serve civil paperwork and go to both the sergeant and lieutenant with their questions. With regard to disciplinary action, the sergeant may write up a deputy or clerical employee and forward it up the chain of command for further action.

(4) Communications/ (5) General Services

A captain is in charge of communications and general services divisions and reports to one of the majors. Below the captain, each division is assigned a sergeant.

The communications division provides law enforcement radio communications and dispatch service for all of Linn County outside of the Cedar Rapids/Marion metro area. It operates on a 24/7 basis and has nine communication operators who work in a radio room. The sergeant assigned to communications has paramedic credentialing and helps out with paramedic issues for the patrol's rescue unit. There are no examples to demonstrate if and

how the sergeant assigns, directs, or otherwise supervises the communication operators.

The general services division performs or oversees a variety of services including supplies, training, vehicle maintenance, community related activities, and recruitment. It has limited hours of operation and there are one clerk and three mechanics who work there. There are no examples to demonstrate if and how the sergeant assigns, directs, or otherwise supervises the clerk or mechanics.

(6) Patrol

A lieutenant is division commander for patrol and reports to the major who also commands the criminal division. In this division, there are two specialty units. One is the U.S. Marshal Warrant Task Force where one sergeant is assigned and does sex offender enforcement and limited warrant work. A second unit is rescue where there are three deputies assigned. In this unit, there is no supervisor per se, but the sergeant from communications and a sergeant from patrol assist with issues such as paramedic training or equipment. When rescue is dispatched, it's the on-duty patrol sergeant who instructs the unit's deputies. The rest of the division is referred to as the patrol unit (patrol) that provides crime prevention or law enforcement activities for the county. There are five sergeants and 23 deputies who work in this part of the division.

The patrol division operates on a 24/7 basis with four shifts covering a 24-hour period: 6 a.m. to 2 p.m.; 2 p.m. to 10 p.m.; 7 p.m. to 3 p.m.; and 10 p.m. to 6 a.m. The schedules and assignments are made to fully staff the four zones

with four deputies. Minimum staffing of three deputies is set by the lieutenant. At 7 p.m., the division gains four more patrol cars and is "zoned out." The sergeants do not create the minimum staffing levels or zones, but have the ability to decrease the zones and reassign deputies to accommodate absences. They cannot deviate from the minimum staffing levels.

The patrol sergeants are limited in their control, if any, of available deputies or resources to assist with law enforcement activities. The patrol major has reprimanded them, via email, for using the services of the rescue unit and indicated that they may reach out to transport, civil, and even command staff when they are busy or short on cars. As another example, the sergeants must get command staff approval before they utilize the "Snowmobile Volunteers During Winter Emergencies." In limited situations and subject to County/PPME CBA, the sergeants may call deputies in early or hold them over on a shift. One example of that is when bad weather results in heavy traffic incidents. They may approve deputies' requests for time-off, but only in accordance with the County/PPME CBA. If a deputy's request is made in advance, it is approved by the lieutenant or major. At the beginning of the year, the lieutenant will request the deputies' annual vacation requests. Only the lieutenant can approve minimum staffing deviations or any other matter concerning the deputies that falls outside the provisions of the County/PPME CBA.

Before beginning a shift, a sergeant will call ahead to the on-duty supervisor to get a brief summary of the operation's status and discuss what law enforcement activities had transpired. Once on duty, the sergeant may do a roll

call of deputies, answer calls for service and respond to calls of a serious nature, complete reports, review and sign or notarize deputies' reports for completeness (i.e. witness statements, property receipts), review and sign deputies' time cards, communicate via radio with deputies who are on patrol, conduct their own law enforcement patrol, and assist deputies when in their area or for specific service calls. The patrol major reminds the sergeants that they must respond to calls, especially those of a serious nature, and they should provide guidance and assistance to the deputies. Command staff expects the sergeants to patrol and have a certain number of traffic enforcements like the deputies. The patrol major of patrol/criminal reminds the sergeants of the traffic enforcement statistics that the sergeants and deputies are expected to maintain and reprimand those sergeants who are not meeting the standards.

Command of law enforcement situations rests with the patrol supervisor, typically a sergeant, who directs the operation and is responsible for its outcome. In accordance with department policy, when a sergeant is absent, a deputy takes charge of the scene. At all times, command staff monitors the patrol's radio communications. For serious incidents that occur such as a homicide, suicide, burglary, accident with a serious injury or fatality, a sergeant must notify command staff with a group page. One of the command staff will come to the scene at any hour when the situation warrants. The sergeants do not have authority to request an accident or fire investigator or a sergeant/detective. The sergeants must contact the lieutenant or major to make that determination.

The sergeants must notify the major when there has been damage to a county vehicle and contact must be immediate if the damage is substantial. The sergeants must notify command staff when a deputy is late or when a sergeant has to counsel a deputy for his or her appearance. When there is a citizen complaint against a deputy, the sergeant can only take information and forward it onto command staff for review and a determination on the appropriate action to be taken. When a deputy has not performed in accordance with standards, a sergeant may investigate the incident. The sergeant may also counsel a deputy, but only if it is approved by the command staff. As an email from the major who commands the patrol/criminal divisions reminds the sergeants:

> . . . I again want to stress the necessity of keeping the Lieutenant and I informed of any staff policy violations, possible misconduct, citizen complaints, etc., regardless of how minor it may be perceived. The Lt. and I need to be aware of these, each and every time they occur. . . . Now, there may be those instances in which, depending on the circumstances, your actions are all that's needed and the Lt. and I may see no need for intervention, but you need to let us know so we can make that determination.

(7) Criminal

A lieutenant is the criminal division commander and reports to the major who is also in charge of patrol. Criminal has one specialty unit where one sergeant is assigned to the Drug Enforcement Agency (DEA) and works under its direction. The other part of the division is called the detective unit where five sergeants/detectives and six clerical employees are assigned, the latter of which are supervised by the analyst. The lieutenant assigns cases to the sergeants/detectives. The manual outlines instances when a sergeant/detective

should respond to certain calls. When necessary, only command staff, not other sergeants, can dispatch a sergeant/detective to a crime scene.

The sergeants/detectives do not supervise any employees on a day-to-day basis, but have interaction with deputies at crime scenes. They take charge of crime scene activities, which is approximately 10 percent of their time. As a part of that responsibility, they may give follow-up instructions to deputies to do things such as interview a suspect or fill in missing information on a report.

(8) Correctional Center/Jail

One of the four majors commands the correctional center/jail and is known as the jail administrator. A lieutenant is second in command and is known as the assistant jail administrator. The correctional center/jail has two specialty units, courthouse security and transport, with one sergeant assigned to both units. There are seven deputies assigned to courthouse security. The transport unit provides the transportation for prisoners or others who have pickup orders or outstanding warrants for their arrests. Five deputies are assigned to this unit. The remainder of the division provides for the supervision and care of prisoners and provides security in the center. There are five sergeants, 43 deputies, six correctional officers, nine duty officers, five clerical employees, a health services coordinator and five nurses assigned.

The correctional center/jail operates 24/7 with three work shifts a day: midnight to 8 a.m., 8 a.m. to 4 p.m., and 4 p.m. to midnight. On each shift there are usually nine deputies, two to three duty officers, one to two correctional officers, one to two cooks, and the nurses overlap. The jail administrator or

assistant administrator sets the minimum staffing levels. A supervisor is on duty at all times. At least half of the time, the highest ranking officer is a sergeant who works alongside and oversees the deputies and the civilian staff in accordance with the parameters set by the command staff, jail administrator, and sheriff. A sergeant can fill staff absences. There is conflicting evidence on whether these sergeants can add staff for other reasons, but the persuasive testimony is that sergeants must obtain command staff approval. A sergeant can reassign deputies for situations that arise, such as inmate fights that occur on a regular basis or when an inmate needs transported to the hospital. However, command staff must make determinations in unusual situations including occasions when an inmate may need guarded at a hospital.

CONCLUSIONS OF LAW

The issue in this case is whether the sergeants are included in chapter 20's coverage and thus, eligible for bargaining unit inclusion. The County claims that the sergeants are supervisory employees within the meaning of Iowa Code section 20.4 and excluded from chapter 20's coverage. IBEW claims that the sergeants are not supervisors and are eligible for bargaining unit inclusion in their own independent unit as proposed by IBEW.

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:
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> * * *
>
> 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, 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.

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. *Iowa Ass'n. of Sch. Boards v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987); *Black Hawk County*, 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*, 06 PERB 6868 at 21; *Iowa City*, 02 PERB 6353 at 5.

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. *State of Iowa Department of Personnel v. PERB*, 560 N.W.2d 560, 562 (Iowa 1997); *City of Davenport, 264 N.W.2d* 307, *314 (Iowa 1978).* 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. *Id.* 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.

The employee's regular, not occasional or temporary, functions and responsibilities are determinative. *Id.* 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.* 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.* Further, for supervisory status to exist, the position's responsibilities must substantially identify the employee with management. *Id.*

Applying these principles, " . . . PERB examines the record before it for evidence that such [supervisory] authority exists in reality, not merely on paper." *City of Des Moines*, 09 PERB 7933 (09 H.O. 7933 at 67). 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." *City of Davenport*, 264 N.W.2d 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.

As a result of this case-by-case approach, the supervisory status of a rank in law enforcement, such as sergeant or lieutenant, has varied from case-to-case. *See, e.g., City of West Des Moines*, 83 PERB 1983 (police sergeants excluded as supervisors); and *City of Mason City*, 86 PERB 3040, *City of Independence*, 86 PERB 2998, and *Cedar Rapids*, 75 PERB 54 (police sergeants not supervisors). Additionally, not all employees of a particular rank who work for one employer are necessarily supervisors simply because some are. *See, e.g., City of Sioux City*, 11 H.O. 8197 (some, not all, lieutenants are supervisory); and *City of Des Moines*, 06 PERB 7933 (some, not all of the police department captains, lieutenants, and sergeants are supervisory).

Applying these principles to the record at hand, the County has failed its burden of establishing that the sergeants possess the authority to accomplish any one of the enumerated supervisory functions listed in section 20.4. The County makes no claim and offered no evidence to establish that the sergeants have the authority to transfer, suspend, layoff, recall, discharge or hire other public employees. There is some evidence with regard to the County's claim that the sergeants have the authority to promote, assign, reward, or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively recommend such actions. However, it is unpersuasive and consists of few, if any, tangible examples of the supervisory function alleged.

Promote and reward

Although not articulated as a claim by the County, there was evidence to suggest that the sergeants "effectively recommend" deputies for promotion when an opening occurs. A second related claim specifically alleged by the County is that the sergeants "effectively recommend" deputies for rewards by way of commendations or recognition awards. There is evidence that the sergeants have a hand in recommending deputies for promotions or rewards, but their roles do not rise to the level of a section 20.4 supervisory function in either matter. For the supervisory function to be established, it must be shown that the employee has the authority to use independent judgment to make the effective recommendation in the interest of management. Further, 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 Community School District*, 76 PERB 72 at 8.

> . . . the definition of effective set forth [in the statute], implies that the recommendation, in order to be effective, must produce the desired result, be operative or actual, and not merely potential or theoretical.
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> * * *
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> . . . these effective recommendations, absent unusual or extraordinary circumstances, become operative decisions in the conduct of the public employer's operations.

Davenport Community School District, 76 PERB 72 at 6-8. A mere showing that the recommendations were 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,* 89 PERB 3317 at 22.

While the importance of the sergeants' recommendations for promotions and rewards is undisputed because of their firsthand knowledge of the deputies' day-to-day work, they do not "effectively recommend" within the meaning of section 20.4. To a large degree, the mandates of Civil Service limit the discretion and thus, the independent judgment that the sergeants, as well as the command staff, exercise in the promotion of deputies. When a promotional opportunity arises, the sergeants provide whatever firsthand information they have on each eligible candidate to the command staff. The sergeants do not participate in the command staff's interviews of the eligible deputies and ultimately it is the sheriff who determines which deputy is promoted. Regardless of whether a sergeant's comments in this process constitute feedback or are truly a recommendation, it is subject to further review and consideration by the chain of command and thus, it is not "effective."

With regard to rewards, the sergeants, like all other department employees, can recommend that a deputy is rewarded or recognized for his or her work. However, the sergeant's recommendation is forwarded up the chain to the division commander who compiles a synopsis and sends it further up the chain to the sheriff who ultimately determines whether the reward is given. More often than not, the sheriff grants the reward recommended by a sergeant, but in any event does not rubber stamp a sergeant's recommendation. The sergeants' recommendations for both promotions and rewards are subject to further

independent review and *de novo* consideration by command staff and the sheriff. Consequently, the County has failed to establish that sergeants "effectively recommend" promotions or rewards for other public employees.

Discipline

The record does not support the conclusion that the sergeants are supervisors because they possess the authority to discipline or "effectively recommend" the discipline of other public employees. The County claims that the sergeants are supervisors because they allegedly have the authority to discipline other employees through counseling, verbal reprimands, and rewards, and can "effectively recommend" other disciplinary measures of department employees. Assuming *arguendo* that reward is a measure of discipline as stated in the department's manual, the sergeants do not possess the authority to reward or to "effectively recommend" the reward of other employees as previously discussed.

There is evidence to find that the sergeants, with the exception of the criminal division sergeants, have the authority to address perceived shortcomings or misconduct by counseling. The manual refers to this as a non-punitive form of discipline. Despite the County's assertion that the sergeants issue oral or verbal reprimands, the manual provides that those are issued by the sheriff. In any event, the sergeant's discretion in exercising this authority is limited because the sergeants are reminded to consult with higher command for even minor infractions by deputies. Regardless, the sergeant's authority is insufficient to confer supervisory status:

> . . . for an employee to be a supervisor based on the authority to discipline, he or she must have more than the power to issue verbal reprimands.

City of Davenport, 264 N.W.2d at 321*; City of Cedar Falls*, 06 PERB 6868 at 26.

There is no evidence that the sergeants' recommendations on other forms of disciplinary action for other employees is not without independent review and *de novo* consideration. The sheriff ultimately makes the determination on all other forms of disciplinary action or what the department refers to as punitive discipline. Thus, the County has failed to establish that the sergeants have the authority to discipline or "effectively recommend" discipline to confer supervisory status within the meaning of section 20.4.

Direct and Assign

On this particular claim, the County seemingly concedes that the sergeant assigned to the patrol division/US Marshal and the sergeant assigned to the criminal division/DEA do not direct or assign other employees. Of the remaining 19 sergeants who the County claims assign and direct other employees, the record is generalized, conclusory, and lacking in tangible examples of the sergeants' exercise of their purported authority.

There is some evidence that the sergeants assign and direct deputies in civil, patrol, and the correctional center/jail, but because their activities appear to be routine in nature, it is insufficient to find supervisory status. "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. These sergeants

exercise their authority within very rigid parameters in accordance with paramilitary protocol and as set by the department's policy and procedures manual, the command staff, and the sheriff.

Under these parameters, the sergeants are limited to when they may deviate from the command staff schedule or redirect deputy resources. For instance, patrol sergeants may reassign deputies to accommodate an absent employee or correctional center/jail sergeants may redirect deputies due to an inmate fight. However, the sergeants' assignment and direction in these instances are done on a routine basis and do not require the use of independent judgment. In these situations, the sergeants are restricted by and must meet their required minimum staffing levels and defer to command staff to schedule additional employees for unusual events or circumstances. Additionally, sergeants typically do not grant overtime and can only approve last minute leave requests, both of which must be in accordance with the employees' respective collective bargaining agreements. Although some sergeants are responsible for the review and submission of reports, it is more of an administrative function than a supervisory one.

Additionally, the record does not support a finding that the sergeants direct other employees in law enforcement situations. While the sergeants are the highest ranking officer present for at least half of a 24-hour period in the patrol and correctional center/jail divisions, the command staff is always on-call and must be immediately contacted for direction on any unusual situations. Some sergeants will work alongside deputies and take "command" of a scene and

direct operations whether it is a law enforcement issue for patrol, a security inmate issue in the correctional center/jail, or a crime scene investigation for the criminal division. However, their command is by virtue of their rank and experience or expertise and is more of a "leadman" role than a supervisory role.

> [T]he statutory words 'responsibility to direct' are not weak and jejune but import vigor and potential vitality." The 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 (quoting *NLRB v. Harmon Industries, Inc.*, 565 N.W.2d 1047, 1051 (8th Cir. 1977)). "Leadman" is typically the most experienced employee who works alongside and directs a small group of employees. 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. *City of Independence*, 86 PERB 2998 at 9.

In this case, there are no tangible examples to demonstrate that when sergeants take command of a scene, it requires their use of independent judgment. In fact, the evidence shows that the sergeants must contact command for anything other than routine matters. For instance, a patrol sergeant must contact command staff when there is a homicide, suicide, burglary, accident with a serious injury, or a fatality. Additionally, command staff will come to the scene for substantial incidents. A correctional center/jail division sergeant must contact command staff to provide inmate security at a hospital.

With regard to the sergeant assigned to general services and the sergeant assigned to communications, the record contains only generalizations that they assign and direct other employees. There are no tangible examples to

demonstrate how they exercise that authority and that it requires the use of independent judgment.

The most persuasive evidence that an employee is a supervisor is "evidence of actual supervisory authority visibly translated into tangible examples." *City of Davenport*, 264 N.W.2d at 314.

> 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 *Iowa Association of School Boards v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987)).

In the absence of tangible examples, the allegation that the sergeants assign and direct is not persuasive. Thus, the County has failed to establish that the sergeants possess the authority to assign and direct other employees.

Adjust Grievances

There is insufficient evidence to find that the sergeants have responsibility to adjust other employees' grievances or to "effectively recommend" the adjustment of grievances.

> Adjusting a grievance involves an inquiry into its validity, a determination on the merits, and the taking of corrective action when necessary.

City of Davenport, 264 N.W.2d at 323. Preliminary efforts to resolve minor grievances do not make them supervisors. *Id.*

Although the collective bargaining agreements require employees to meet with their immediate supervisor in the first step of the grievance procedure, there

are no tangible examples of a sergeant inquiring into the validity of a grievance, determining its merits, and taking corrective action when necessary. While there was generalized testimony that the sergeants have the ability to resolve grievances at first step, there are no tangible examples to show that they can use independent judgment to resolve those grievances. One example referenced was an incident where the sergeant indicated only that "he would see what he could do." Additionally, there was credible testimony that the sergeant sends the grievance up to higher command as a matter of course. Further, the sergeants do not represent management on the labor relations committee that consists of the employee/union representatives and management representatives. The evidence is not persuasive that the sergeants have the responsibility to adjust grievances.

There is some evidence that the command staff takes a sergeant's recommendation into account on grievances that affect a procedure or process in that sergeant's division. However, the sergeant's recommendation is not "effective" because it is not accepted as a matter of course and is subject to further review and consideration by command staff. Accordingly, the County has failed to establish that the sergeants possess the responsibility to adjust grievances or "effectively" recommend grievance adjustments.

CONCLUSION

The totality of facts in this case does not warrant a finding that the sergeants possess the authority of any one supervisory function. Having examined the entire record, I conclude that the sergeants are not supervisors

within the meaning of section 20.4(2) and are bargaining unit eligible. Consequently, I propose the following:

ORDER

The unit determination portion of the petition filed herein by International Brotherhood of Electrical Workers is GRANTED.

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

> INCLUDED: All sergeants in the patrol, criminal, communications, general services, civil, and correctional center/jail divisions of the sheriff's office.
>
> EXCLUDED: All other employees.

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 IBEW 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 11th day of July, 2014.

Diana S. Machir
Administrative Law Judge

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