

public employer” within the meaning of Iowa Code section 20.4(2). Thus, the District argues that the position is excluded from unit eligibility as a matter of law. Finally, the District asserts that if the b & g project assistant is not excluded from chapter 20’s coverage then it does not belong in the existing unit because the position is professional or because the position does not share a community of interest with the other unit employees.

By order, dated November 5, 2013, PERB set both cases for hearing on December 4, 2013. The Board consolidated the two cases, Nos. 8707 and 8708, by order dated November 12, 2013. At the District’s request, the hearing was continued and held on January 9, 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. 1011, 1960, 4879, 5109, 5317, and 6137. The parties submitted briefs, the last of which was filed on March 18, 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 has 31 buildings and employs approximately 2,800 employees who are organized into eleven groups. Three hundred employees are divided into three non-collective bargaining groups referred to by the District 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, educational office professionals, and maintenance. SEIU represents the educational office professionals unit and the maintenance unit for the purposes of collective bargaining. The first six units are represented by other unions.

SEIU seeks to clarify whether the job classification of b & g project assistant is included or excluded from the education office professionals unit. The unit was first organized in 1977, PERB Case No. 1011, and the Cedar Rapids Association of Educational Secretaries was the employee organization certified to represent the unit, which was described as:

INCLUDED: All secretarial and clerical employees of the Cedar Rapids Community School District except those specifically excluded below.

EXCLUDED: Secretary to the Superintendent, Secretaries to the Assistant Superintendents, Secretaries to the Executive Directors, Secretary to Director- Research and Evaluation, Secretary to Director-Finance, Secretary to the Board of Education Secretary, Secretary to the Administrative Assistant-Labor Relations, Secretarial and Clerical employees in the Personnel Department, Teacher Aides and Associates, all other school district employees, and all other persons excluded by Section 4 of the Act.

In 1981, PERB Case No. 1960, the certified employee organization's name changed to Cedar Rapids Association Educational Office Personnel and again in 1993, PERB Case No. 4879, to Cedar Rapids Association of Educational Office Professionals. The unit was amended in 1994, PERB Case No. 5109, and remains the unit description as follows:

INCLUDED: All Secretarial and clerical employees of the Cedar Rapids Community School District except those specifically excluded below.

EXCLUDED: Secretary to the Superintendent, Secretaries to the Executive Directors, Secretary to Director-Finance, Secretary to the Board of Education Secretary, Secretarial and Clerical employees in the Human Resources Department, Teacher Associates, and all other persons excluded in Section 20.4 "Exclusions," the Code of Iowa.

The certification of the employee organization was amended in 1995, PERB Case No. 5317, to the Service Employees International Union, Local 150 and amended a second time in 2000, PERB Case No. 6137, to SEIU, Local #199. However, the composition of the unit remained unchanged in both cases.

There are approximately 160 people in the educational office professionals unit. Some of the job classifications include mail distribution clerk, clerk typist, attendance secretary, media secretary, department secretary, transportation clerk, health secretary, accounting clerk I, accounting clerk II, activities secretary, counselor secretary, associate principal secretary, principal secretary, educational leadership support center (ESC or ELS) secretary, and bookkeeper. The unit positions are paid at different rates referred to as A through F in the collective bargaining agreement between the District and SEIU. The difference in responsibility and skill sets required accounts for the different rates. The highest level is "F" and includes the principal's secretary, ECS secretary, bookkeeper, accounting clerk I, and

accounting clerk II. There are employees who have associate or bachelor degrees in these level "F" classifications.

The duties vary with respect to unit employees. For instance, in addition to typing, the clerk typists perform errands for others. There are media secretaries who function as library assistants and help students learn new software or check out books. They may help with recess duty. Other secretaries work with a school counselor and some secretaries work with a school nurse and dispense medication. The principals' secretaries represent individual schools and have been considered to be equivalent to the ESC secretaries. Both have a high degree of public scrutiny. There are about three to five ECS secretaries who, along with the mail distribution clerk, work in the administration building for various departments.

The building and grounds (b & g) department oversees the District's building repairs and all custodial supplies. When a new manager Rob Kleinsmith took over the building and grounds department a few years ago, there were two building and grounds secretaries who were included in the SEIU-represented unit at issue. One was classified as a department secretary, Annette Lindo, and paid at a rate called class "C" in accordance with the collective bargaining agreement. The other, Terri Choplick, had been reclassified from a department secretary to an ESC secretary and paid at the highest class "F."

The building and grounds ESC secretary's job description provides, in relevant part, that principal duties include: serve as lead secretary and

prioritize and direct work flow in the office; provide secretarial support for the managers and supervisory staff; organize, collect and assemble information for special projects; prepare and enter invoices and proposals into BSO purchasing system; coordinate and check account numbers; use electronic payroll and work order system to enter, check, and correct payroll; use work order system to account for and track work orders; prepare and organize pertinent data for necessary reports; and maintain various department databases.

In her position as ESC secretary, Choplick processes the payables and ensures their accuracy; occasionally works with vendors; prints out daily work orders; and on a limited basis, works with the District's work order software system (SchoolDude). She collects and assembles information for special projects, such as custodial schedules and attendance reports. She matches receipts with approved invoices, resolves discrepancies with vendors, and enters them in the system for payment. In the past, Choplick resolved trash collection scheduling or pick-up problems.

Lindo had worked for the District and transferred to the building and grounds department secretary position in 2010. The job posting had provided that essential duties included, in relevant part: provide clerical support; assist with the duties of the manager's secretary; enter purchase requisitions in BSO and process invoices; maintain and distribute security call list; coordinate contractors and vendors; and assemble presentations and specifications for distribution. The essential skills included, in relevant part: the ability to use professional software; the ability to learn new computer programs; and the

ability to problem solve independently and work independently. A high school degree was required, but a post-secondary education was listed as preferred.

Lindo's position transformed to higher responsibility levels during the three years she worked for the department. This was due in part to the District transitioning to electronic systems towards the end of her tenure. While in the position, she was responsible for processing the District's work orders in a system that is tied to the District's accounting department. The system tracks material costs and also related payroll of District employees such as carpenters, painters, and mechanics. Lindo also processed purchase requisitions and vendor invoices in the District's billing system. She was responsible for researching and assembling handouts or power point presentations for weekly meetings and different committees. As an example, she put together an energy power point presentation on the District's historical use of electric and water, broken down by school, square footage and student population.

After Lindo resigned her position in 2013, Kleinsmith went to the District's human resources department and asked that the position have a higher degree of responsibility to offset some of his lower-tiered duties. He wanted the position to monitor the alarm system, oversee the garbage disposal company, and assist with managing construction projects. The record does not reflect the date of Kleinsmith's request.

On July 8, 2013, the District posted the position for Lindo's position as a building and grounds secretary at group "F" classification. Essential duties

included in relevant part: provide clerical support for Building & Grounds and Custodial Grounds Departments; support the districts security alarm, waste management and SchoolDude work order programs; support the department's payroll system; data entry, filing, and record keeping; enter purchase requisitions in BSO and process invoices; maintain and distribute security call list; and assemble presentations and specifications for distributions. Essential skills included: ability to use professional software; work independently on projects, meet deadlines, and function with minimal supervision; and demonstrate leadership skills, organizational ability, and prioritizing skills. The education required was a high school diploma or equivalent. The posting end date was listed as July 12, 2013.

On July 23, 2013, SEIU representative Audie Schmidt, along with the former president of the chapter, Pat Semanek, met with the District's HR Executive Director Jill Cirivello and discussed the vacant building and grounds secretary position. They agreed that the position would be reclassified to an ESC secretary. By email, Schmidt requested confirmation of the reclassification by Cirivello the next day, July 24, 2013, and again on August 1, 2013. Cirivello confirmed the reclassification on August 1, 2013.

On September 5, 2013, the District posted the position as "b & g project assistant" without notification to SEIU. The District determined that the position should be placed in the non-administrative "meet and confer" group rather than the SEIU-represented unit of office professionals or any other organized and union-represented unit. The District's placement of employees

in a “meet and confer” group is not based upon a legal determination from PERB regarding the employee’s bargaining unit eligibility. Rather, the District follows a Decision Band Method and examines the job description, complexity of duties, use of independent judgment, and different criteria to determine a job classification’s placement. For the b & g project assistant, essential duties included in relevant part: implementation and management of the District’s work order software; support the District’s security systems by acting as a liaison between security companies and District staff; facilitate the District’s waste management services by coordinating schedules with waste haulers, reviewing and approving invoices; coordinate the District construction projects with responsibilities including, but not limited to, bidding and specifications, management of construction contracts, review of contractor and architect invoicing and set up for payment, tracking of construction expenditures; and assembling of presentations and newsletters to promote building and grounds initiatives.

The District hired Tracie Gutknecht as the b & g project assistant in October 2013. As part of the interview process, Gutknecht had designed a flier that impressed the District. Gutknecht has a high school diploma and had taken some college coursework. Her resume does not list a degree or the type of coursework completed. She worked in sales/customer service management for employment or labor resource groups. For the time she has worked for the District, Gutknecht has performed or in the process of performing a variety of tasks for Kleinsmith: communicate with schools for updated contact

information; change and reassign alarm codes; identify account codes for work orders; produce District-sponsored event flier; reorganize damage loss reports; update paint data bases; design and compile newsletter; compile water consumption data; design department and green team websites; resolve garbage pickup issues and enter related bills; create Excel spreadsheet of construction projects; and compile all bids for high school HVAC renovation. Gutknecht uses Microsoft Publishing for the publications. The newsletter, sponsor flier and green team websites are subject to the direction and approval of Kleinsmith and the District energy project supervisor Tammy Carter. The District's architectural/engineering firm is Shive-Hattery (S-H) and the District's project managers (DPM) are listed as Kleinsmith, Carter, Doug Smith, and Chris Gates. Kleinsmith or the DPM approves documents for the District, including contractor applications and change orders. With regard to written procedures for how the District works with S-H, Gutknecht's name was merely substituted for Choplick where Choplick's name previously appeared. Thus, Gutknecht receives copies of construction contracts. S-H invoices are sent to the District's accounts payable department, but a copy is sent to Gutknecht who processes these in the BSO system. Copies of the S-H contracts are sent to Gutknecht who enters them into the District system. These were all duties previously performed by Choplick.

CONCLUSIONS OF LAW

SEIU's petition in Case No. 8708 seeks clarification concerning whether the b & g project assistant is within the represented bargaining unit. In its

alternative petition in Case No. 8707, SEIU seeks to amend the existing unit to add the b & g project assistant if it is found that the position is not presently included in the unit. The unit of amendment proceeding facilitates adjustments in the composition of the bargaining unit while the unit clarification proceeding discerns the inclusion or exclusion of job classifications or employees in the unit as presently constituted. *E. Iowa Cmty. Coll. Higher Educ. Ass'n & E. Iowa Cmty. Coll. Dist.*, 82 PERB 2110 at 3; *Hawkeye Cmty. Coll. & United Elect., Radio & Machine Workers of Am.*, 02 PERB 6310, 6312, and 6321 at 9.

I. Clarification of Unit.

Clarification determinations begin by examining whether the position is encompassed by the wording of the present bargaining unit description. *E. Iowa Cmty. Coll. Higher Educ. Ass'n*, 82 PERB 2110 at 3. The existing unit description may unambiguously resolve the question of the position's unit status. *Id.* If the unit description is ambiguous with regard to the position's status then examination of other probative factors is required. *Id.* Other factors would include such matters as whether the position at issue has been traditionally treated as included or excluded in the unit, whether similar positions or person who perform similar duties are included in the unit, and like factors. *Id.* The caveat to the examination of other factors is:

. . . the focus is on those matters probative of whether the position is and has been in the bargaining unit, not whether it should be or should have been placed in the bargaining unit.

Id.

In this case, the b & g project assistant's unit status is not unambiguously resolved by an examination of the bargaining unit description. That description includes "secretarial and clerical employees." This part of the description has not been updated or modified since 1977. While the District's secretarial and clerical positions have evolved in scope and nature of duties over time as asserted by SEIU, it is unclear from only the wording whether the b & g project assistant would be classified as a secretary or clerical employee who has historically been included in the unit.

Other probative factors resolve the ambiguity and support the District's assertion that the b & g project assistant is a new position that has not been included in the bargaining unit. One such factor is that the position has not been traditionally treated as being in the unit. Although many duties of the b & g project assistant had been previously performed by a department secretary (Lindo) who was in the unit, Lindo's position is not the same as the b & g project assistant position at issue. The District added greater responsibilities for the b & g project assistant. For instance, there is an expectation that the b & g project assistant will be more involved in assisting with construction projects by organizing and compiling preliminary matters for the building and grounds manager. The b & g project assistant also has greater responsibility for electronic communications such as websites and newsletters.

As another probative factor examined, there are unique functions of the b & g project assistant that are not performed by other unit employees. While

the b & g project assistant does perform processing and other administrative duties that are done by bargaining unit employees, it has additional responsibilities that are of a project nature rather than task oriented, such as publication duties and organizing and overseeing preliminary construction matters. As asserted by SEIU, these duties may also be characterized as administrative support in any event and a reason for the position's unit inclusion. However, the issue in a clarification proceeding is whether the position is and was in the bargaining unit rather than whether it should be or should have been placed in the unit.

Having examined the entire record, and finding no persuasive evidence that the b & g project assistant has traditionally been treated by the parties as within the present bargaining unit or the existence of any other factor indicative of its inclusion, I conclude that the b & g project assistant is not and has not been in the presently constituted bargaining unit.

II. Amendment of Unit.

Having concluded that the b & g project assistant is not in the presently constituted bargaining unit, the issue is whether the unit should be amended to include the position. The District alleges that the b & g project assistant is a managerial employee and thus, excluded from bargaining unit eligibility as a "representative[] of a public employer" within the meaning of Iowa Code section 20.4(2). If it is determined that the b & g project assistant is not excluded and is bargaining unit eligible, the District alleges that the position does not share similar interests with the unit of educational office professionals. Additionally,

the District alleges that the b & g project assistant is a “professional employee.” On these grounds, the District argues that the b & g project assistant should not be included in the SEIU-represented unit of educational office professionals.

SEIU alleges that the b & g project assistant is not a managerial employee and is bargaining unit eligible. SEIU asserts that the educational office professionals unit is an appropriate unit for the position and thus, the unit should be amended to include the b & g project assistant in its composition.

A. Exclusion/Managerial Employees.

The District claims that the b & g project assistant is “performing work that is more closely aligned with management and [has] the ability to use her own discretion when resolving issues dealing with vendors.” Thus, the District concludes that the position is a managerial employee and is ineligible for bargaining unit inclusion under section 20.4(2).

Iowa Code section 20.4 does not specifically exempt “managerial employees” as a class of employees ineligible for bargaining unit inclusion. However, the Board has distinguished managerial employees from rank-and-file unit employees and excluded them from unit eligibility 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; *Black Hawk Cnty. & Public Prof. & Maint. Employees, IUPAT, Local 2003*, 07 PERB 7348 at 7-8; *Council Bluffs Cmty. Sch.*

Dist. & Comm'n Workers of Am., Local 7103, 03 PERB 6514, 6516 & 6536 at 21-22 (*affm'd Council Bluffs Cmty. Sch. Dist. v. PERB*, Case No. CVCV086308 (Pottawattamie Cnty. 2004)); *Davenport Cmty. Schs. & Davenport Educ. Ass'n*, 75 PERB 72 at 15-17. Iowa Code section 20.4(2) provides in relevant part:

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

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

PERB interprets these exclusions narrowly because chapter 20 "is written in broad language so as to allow a large number of public employees to be eligible for coverage" *Iowa Ass'n of Sch. Bds. V. PERB*, 400 N.W.2d 571, 576 (Iowa 1987). The party asserting exclusion under section 20.4(2) bears the burden of establishing the exclusion applies. *Clay Cnty. & Int'l Union of Operating Engineers, Local 234*, 11 PERB 8290 at 6; *City of Iowa City & AFSCME Local 183*, 02 PERB 6353 at 5.

The "managerial employee" exclusion is recognized for those at higher levels of the managerial structure who are so 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 the other employees if the managerial employee is placed in the same bargaining unit. *See, e.g., City of Eagle Grove & Teamsters Local 238*, 12 PERB 8459 at 10-11; *City of Waterloo & Comm'n Workers of Am., Local 7175*, 08

PERB 7377 at 9; *City of Farley & Gen. Drivers & Helpers Union, Local No. 421*, 95 PERB 5220 at 34; *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.

PERB has generally followed a conjunctive test set out by the National Labor Relations Board (NLRB) for determining 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*, 95 PERB 5220 at 11; *Davenport Cmty. Schs.*, 75 PERB at 15. Each case involves the totality of facts and circumstances. *Davenport Cmty. Schs.*, 75 PERB at 17.

In the present case, the b & g project assistant is not significantly involved in policymaking or has discretion contemplated by the NLRB conjunctive test to confer managerial status. This position oversees a number of building and grounds functions, including filing and record keeping; dealing with vendors; management of the alarm system and trash collection; coordination of contract bidding and some of the construction; processing of work orders and construction invoices; and design and organization of

websites, newsletters and presentations. However, the record does not support a finding of managerial status. Although the b & g project assistant effectuates policy when carrying out responsibilities, such as overseeing trash collection and the alarm system or collecting construction bids, the position does not formulate or determine District policy. The job description does not reflect that the position has any direct or indirect responsibility for policy making and the record is absent of tangible examples to show that the position has participated in policymaking.

Additionally, in the performance of duties, the b & g project exercises limited discretion and is overseen by the building and grounds manager. The b & g project assistant follows established policies and procedures in overseeing trash collection, the alarm system, security codes, vendors, and contract bids that do not require the use of independent judgment. The b & g project assistant uses Microsoft Publishing to design publications and merely compiles materials for websites and publications subject to the approval of the building and grounds manager and also the District energy project supervisor. The b & g project assistant communicates with the building and grounds manager on a regular basis and with respect to issues that arise outside of established protocol. The b & g project assistant's processing of work orders, designation of project funding, and setting up of construction projects are administrative functions and not of a managerial nature that involve policymaking or require independent judgment.

Secondly, the b & g project assistant is not so closely related or aligned with management as to create a potential conflict of interest with bargaining unit employees. The b & g project assistant is supervised and delegated responsibilities by the building and grounds manager. The b & g project assistant does not work side-by-side with management nor consulted by management with regard to other employees. The b & g project assistant works in a supporting role for the building and grounds department and performs duties similar to those performed by bargaining unit employees. She works in the same building or a similar environment as the unit employees. The position is responsible for work previously performed by the ESC secretary who works in the same office as the b & g project assistant and performs similar duties. The b & g project assistant's duties do not align it with management significantly and distinguish it from other employees—such that it would place the b & g project assistant in potential conflict with bargaining unit employees.

Based on the totality of facts and circumstances in the record, the b & g project is not a “managerial employee.” Thus, the District has failed to establish the position's unit ineligibility as a “representative[] of a public employer” within the meaning of section 20.4(2).

B. Bargaining Unit Placement.

SEIU asserts that the educational office professionals bargaining unit should be amended to include the b & g project assistant. The District resists unit amendment claiming that the position shares a greater community of

interest with the non-administrative meet and confer group. The District further alleges that the b & g project assistant is professional and that the position's professional status precludes its inclusion in the existing unit of nonprofessional employees.

Although the District utilized the Decision Band Method to place the b & g project assistant in an unorganized meet and confer group, Iowa Code chapter 20 governs bargaining unit eligibility and status (unit inclusion or exclusion) for public employees. Considerations for appropriate bargaining unit determinations 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.

Under section 20.13(2), consideration is given to whether the position at issue shares a community of interest with the other unit employees; consideration is not given to whether the b & g project assistant shares similar interests with another non-organized group of employees. That group is irrelevant under the statute. The analysis, under section 20.13(2), 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). 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. Firefighters, Local 3586*, 10 PERB 8043 at 14; *State of Iowa (Regents) & SEIU, Local 150*, 98 PERB 5834 at 14; and *City of Lake Mills & Int'l Brotherhood of Elec. Workers, Local 204*, 96 PERB 5499 at 5-6.

In the case at hand, consideration of the community of interest factor supports a finding that the b & g project assistant shares a community of interest with the SEIU-represented educational office professionals that warrants the placement of the b & g project assistant in their unit. The b & g project assistant has the same work environment as bargaining unit employees and works in the administration building along with other unit secretaries and a clerk. Like the principals' secretaries, the ESC secretaries, bookkeeper, and accounting clerks, the b & g project assistant has a higher level of duties and responsibilities. These particular unit employees have higher formal educations than the b & g project assistant - associate or bachelor's degrees, and are paid at the highest class "F" under the collective bargaining agreement. The b & g project assistant provides administrative support to her department and its manager just as the ESC secretaries provide similar support for their departments. For example, the media secretary functions as a library assistant

and helps students while the secretary for the school nurse helps the nurse with the dispensing of medicine. Further, the b & g project assistant works in the same department as the building and grounds ESC secretary Choplick who performs or did perform many of the same duties as the b & g project assistant and is also supervised by the b & g manager. The duties, skills, training and qualifications, supervision, and work location and environment of the b & g project assistant are all factors supportive of the position's shared interests and similarity with the unit of educational office professionals.

The record supports a finding that the b & g project assistant shares a community of interest with the District's unit of educational office professionals. Thus, the unit should be amended to include the b & g project assistant position.

If the b & g project assistant is a "professional employee" as asserted by the District, it can be included in the nonprofessional unit of educational office professionals provided the majority of the unit and the b & g project assistant agree. Iowa Code section 20.3(8) defines a professional employee and provides:

"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 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 advanced 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.

b. Any employee who:

(1) Has completed the courses of specialized intellectual instruction and study described in paragraph "a", subparagraph 4, of this subsection, and

(2) Is performing related work under the supervision of a professional person to qualify the employee to become a professional employee as defined in paragraph "a" of this subsection.

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.

In support of its position that the b & g project assistant is a "professional employee," the District alleges that the position performs work of an intellectual nature rather than routine work, is responsible to manage the security and trash collection in all of the District locations which requires discretion and independent judgment, performs analysis and research, resolves issues with vendors and designs websites and a newsletter. The District

contends that the work cannot be standardized and requires a more formal education.

The record does not support a finding that the b & g project assistant's duties and responsibilities are varied and not routine mental work, involve the consistent exercise of discretion and independent judgment, and require knowledge of an advanced type. The b & g project assistant's management of the security codes, trash collection, vendors, and other matters is performed according to established policies and procedures. Many of these duties were performed by the department secretary Lindo or the ESC secretary Choplick. Lindo and Choplick also researched and compiled regular presentations and reports as a matter of course and the record does not indicate tangible examples that the b & g project assistant was plowing new ground in similar work she did. Additionally, the b & g project assistant on a regular basis reports to the b & g manager to give status reports of ongoing tasks and to communicate issues that arise. The websites and newsletters are also subject to the approval of the b & g manager and energy supervisor.

The District relies upon the Board's finding of professional status for a graphic designer in *Hawkeye Cmty. Coll. & United Electrical, Radio and Machine Workers of Am.*, 02 PERB 6310, 6312, & 6321, and asserts that the b & g project assistant has similar newsletter and web design duties. However, the graphic designer in *Hawkeye Cmty. Coll.* is distinguishable from the b & g project assistant. The graphic designer in that case had been hired to replace and fulfill all the duties previously performed by an outside private design firm.

The graphic designer had advanced knowledge and experience in that particular field. In the instant case, the b & g project assistant does not have specialized skills in the area of graphics and uses Microsoft Publishing to design layout. Additionally, the b & g project assistant's design duties are only one small part of the overall job.

The b & g project assistant exercises little discretion in the performance of her duties and many of the duties are also routine. Moreover, the b & g project assistant's work does not require knowledge of an advanced type. Her oversight of projects and management of matters require the ability to organize, multi-task, and proficiently use software programs, including Microsoft Publishing. The record does not support a finding that advanced learning is required to fulfill the duties and it is absent of evidence that Gutknecht has learning of an advanced type because scant information was provided on her coursework.

Accordingly, the b & g project assistant does not meet the creiteria listed in section 20.3(8). Thus, the District failed to establish that the b & g project assistant is a "professional employee."

In summary, the record supports the determination that the SEIU-represented educational office professionals unit is an appropriate unit for the b & g project assistant and should be amended to include the position in its composition. The b & g project assistant is a nonprofessional employee and no election is necessary regarding a combined professional/nonprofessional unit.

CONCLUSION

The building and grounds project assistant is a new position that is not and has not been in the presently constituted SEIU-represented bargaining unit. The building and grounds project assistant is not a managerial employee and thus, ineligible for bargaining unit inclusion as a “representative[] of a public employer” within the meaning of section 20.4(2). The building and grounds project assistant is nonprofessional and the existing educational office professionals unit is an appropriate unit for the building and grounds project assistant’s inclusion. Having examined the entire record, I conclude that the building and grounds project assistant is bargaining unit eligible and the existing educational office professionals unit represented by SEIU should be amended to include the building and grounds assistant. Consequently, I propose the following:

ORDER

Case No. 8708: The building and grounds project assistant is a new position that is not and has not been in the presently constituted bargaining unit.

Case No. 8707: 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 educational office professionals currently represented by the Service Employees International Union, Local #199 (See unit history: PERB Case Nos. 1011, 1960, 4879, 5109, 5317, and 6137) is amended to add the building and grounds project assistant and described as follows:

INCLUDED: The building and grounds project assistant and all secretarial and clerical employees of the Cedar Rapids Community School District except those specifically excluded below.

EXCLUDED: Secretary to the Superintendent, Secretaries to the Executive Directors, Secretary to the Director-Finance, Secretary to the Board of Education Secretary, Secretarial and Clerical employees in the Human Resources Department, Teacher Associates, and all other persons excluded in 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 12th day of March, 2015.



Diana S. Machir
Administrative Law Judge

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