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PERB

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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| IN THE MATTER OF:<br><br>RINGGOLD COUNTY,<br>Public Employer,<br><br>and<br><br>PUBLIC PROFESSIONAL & MAINTENANCE EMPLOYEES, LOCAL UNION 2003, INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES,<br>Certified Employee Organization/<br>Petitioner. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | CASE NO. 100052 |

RULING ON OBJECTIONS TO PROPOSED DECISION

On June 29, 2015, Public Professional & Maintenance Employees, Local Union 2003, International Union of Painters & Allied Trades (PPME) filed a petition for amendment of a bargaining unit of employees of Ringgold County which PPME has been certified to represent. Because PPME and the County agreed that an amendment of the unit's description was appropriate within the meaning of section 20.13, they executed and subsequently filed a stipulation to update the unit's description to reflect the current job classification titles and eliminate references to obsolete titles, so that the unit would thereafter be describes as:

INCLUDED: All Secondary Road Department employees in the job classifications of Engineer's Aide, Mechanic, Yardman, Maintenance Operator, Working Foreman I, Working Foreman II, and all other employees working under the County Engineer not excluded by Iowa Code section 20.4.

EXCLUDED: County Engineer, Assistant to the Engineer, Road Superintendent, Office Manager, and all other employees excluded by Iowa Code section 20.4.

The parties' stipulation was tentatively approved on July 1, 2015 and on July 2, PERB issued a Public Notice of Proposed Decision which included a description of the tentatively-approved bargaining unit and indicated that the unit would be amended in the manner described unless objections were filed not later than July 21, 2015.

PPME's petition and PERB's Public Notice were served upon the County auditor by certified mail, received by the County on July 6, 2015. The County was directed to post the petition and Public Notice in places customarily used for the posting of information to its employees, and to also post the Public Notice, and make copies available, in a prominent place in its main office which is accessible to the general public.

On July 15, 2015, PERB received objections to the proposed decision from Kevin Kilgore of Diagonal, Iowa, a municipality in Ringgold County.

Pursuant to PERB rule 621—4.2(6)(c), PPME and the County were advised of the objections and a PERB administrative law judge (ALJ) was assigned to investigate them. The ALJ has completed his investigation, which included conversations with Kilgore and the parties' designated representatives, and has reported his findings to the Board. Based upon the filings in this case and the information gathered by the ALJ, the Board has determined that the objections should be overruled and dismissed, for the reasons discussed below.

Relevant facts

In 1977 Painters & Allied Trades, Local No. 246, AFL-CIO, was certified as the exclusive bargaining representative of a PERB-determined bargaining unit of

the County's employees working under the direction of the County Engineer. That bargaining unit, never formally amended, was described as:

> INCLUDED: All employees of Ringgold County Secondary Road Department including but not limited to the following: Equipment Operators, Helpers, Equipment Mechanics, Patrolmen, Rodmen and Engineering Aides, Surveyors, Truck Drivers, Bridge Repair Mechanics, Shop Foreman and Inspectors and all other personnel that come under the County Engineer.
>
> EXCLUDED: Clerical, supervisory, confidential, Engineer, Assistant Engineer, Party Chief, Maintenance Supervisor, Secretary-Bookkeeper and all other employees excluded by the Act.

In 1982, as the result of an amendment of certification proceeding in accordance with the predecessor of what is now rule 621—4.8(20), PPME became the certified representative of the unit and has negotiated a series of collective bargaining agreements with the County concerning terms and conditions of the employment of the unit employees.

Over the course of time, many of the job classification titles referenced in the 1977 description of the bargaining unit have been altered or eliminated. For example, by no later than 2006, the job classifications of at least Helper, Patrolmen, Rodman, Surveyor, Truck Driver, Bridge Repair Mechanic, Shop Foreman and Inspector had been eliminated as the County's classification system evolved, and new classification titles of Aide I, II and III, Mechanic I and II, Working Foreman I and II and Maintenance Operator I, II and III had been implemented. Due to the inclusion of "all employees . . . that come under the County Engineer" except for those specifically excluded or excluded by the Act,

employees in these new classifications were recognized and treated as bargaining unit employees by the parties.

The parties' adjusted the recognition clauses and salary schedules of their ensuing collective bargaining agreements to reflect the addition or elimination of classification titles as they occurred, with the not-uncommon result that although the parties understood and agreed which job classifications were and were not included within the unit, the "official" unit description determined by PERB in 1977, although outdated because of its reference to classifications which had been eliminated, remained unamended.

During bargaining for a collective bargaining agreement to become effective July 1, 2015, the parties agreed upon the advisability of petitioning PERB for an amendment of the official bargaining unit description which would update the description to reflect the evolution of job classification titles which had occurred since 1977. In early June, 2015, the parties executed a collective bargaining agreement to be effective July 1, 2015 through June 30, 2016. The contract's recognition clause and salary schedule described those included within the unit by use of the updated classification titles employed in PPME's petition for amendment of unit, the parties' stipulation, and PERB's proposed decision to amend the unit in a manner consistent with the stipulation.

<u>The relevant statutes</u>

Iowa Code section 20.4 enumerates a number of types of public employees who are excluded from chapter 20's coverage. They are thus not eligible to

participate in collective bargaining and accordingly cannot be properly included within a bargaining unit of public employees.

Iowa Code section 20.13 addresses PERB's determination of appropriate bargaining units (which includes their amendment, clarification or reconsideration), and provides that in defining a 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."

The "eligibility" and "appropriateness" considerations posed by sections 20.4 and 20.13 control bargaining unit determinations of all kinds. They are thus the sole focus of contested hearings conducted on the various types of bargaining unit petitions, and of the evaluation of objections to parties' agreements upon bargaining unit composition issues which, as here, have been reviewed and tentatively approved by PERB.

<u>The objections</u>

The majority of Kilgore's objections do not raise section 20.4 or section 20.13 issues. Thus, even if factually accurate, they provide no basis for a rejection of the parties' stipulation or the proposed decision to amend the bargaining unit.

For example, Kilgore asserts that the proposed unit amendment differs in a number of ways with the unit described in the parties' past and present collective bargaining agreements, that the County executed the present collective

agreement even though job descriptions for the revised job classifications do not exist, and that the newly-created classification of Road Superintendent is not properly excluded because the position is not listed as excluded in the new contract's recognition clause. Because these objections do not raise section 20.4 or 20.13 issues, we find them to be without merit.

First, we note that amendment of bargaining unit cases are almost always filed during the term of a collective bargaining agreement between a certified employee organization and a public employer. Assuming that the contract's recognition clause does accurately reflect the official unit description shown on the most recent PERB order describing the unit's composition, the amendment sought by the petition will always be inconsistent with the existing recognition clause. Rejecting an amendment, whether agreed upon or determined after a contested hearing, because the amendment would result in a unit described differently than the unit described in the collective bargaining agreement would be almost absurd, defeating the very purpose of the amendment of unit process. Changing the description/composition of the existing unit is precisely the point of an amendment of unit proceeding.

But as is often the case, especially as to units like the one involved here which was last formally described many years ago, the parties have acknowledged and adapted to the evolution of job classification titles and/or the restructuring of the employer's personnel operations. While they have altered the description of the unit in their contract, they have not until now taken steps to formalize the changes through a petition to PERB. While such long-term

informal arrangements and understandings between the parties may not be the best practice possible, to reject a proposed amendment which simply updates the existing description and thus resolves inconsistencies in language between the official unit description and the *de facto* reality of the employer's job classification scheme would only perpetuate the inconsistencies.

Here, for example, it is clear that the classifications of Working Foreman I and Working Foreman II have been in existence since at least 2006. They have been recognized by the parties as being included within the unit due to the "and all other personnel" language of the 1977 description, and have been treated as such. The employees in those classifications are aware that they are included within the PPME-represented unit, and none have objected to what is effectively a non-substantive "update" of the unit description to make it coincide with the reality of the employer's current classification scheme. That the recognition clauses of past or present collective agreements are not entirely consistent with either the 1977 description or the proposed unit is simply not an objection which raises a valid issue under Iowa Code section 20.4 or 20.13. Nor does the claimed absence of written job descriptions for updated job classification titles raise such an issue and provide a basis for rejection of the parties' stipulation or the proposed decision to amend the bargaining unit.

Another objection raised by Kilgore, also related to a perceived inconsistency between the proposed/tentatively approved unit and the parties' collective agreement, is that the proposed unit description effectively includes bargaining eligible temporary employees (*i.e.*, those temporary employees

employed for more than four consecutive months), but that the new collective bargaining agreement contains no wage rate for them. Although this objection too raises no legitimate section 20.4 or section 20.13 issues, but instead addresses the completeness of the parties' collective bargaining agreement, the parties have recently filed an amended stipulation which specifically excludes temporary employees from the bargaining unit. This amended stipulation thus would resolve the concern raised by this objection by making it clear that bargaining-eligible temporary employees, who in fact have never been treated by the parties as included within the unit, are not included therein.

One of the objections raised does, however, plainly present a section 20.4 issue. Kilgore asserts that employees classified as a Working Foreman I or Working Foreman II cannot properly be included in the unit because they are excluded from chapter 20 coverage by section 20.4(2) because they are supervisory employees with the responsibility to direct other public employees. Based upon the investigation by the ALJ, we find this objection to be without merit in this case because it is unsupported by fact.

In order to be a supervisory employee within the meaning of section 20.4(2), an employee must 1) have authority 2) to use independent judgement 3) in performing at least one supervisory function 4) in the interest of management. *City of Davenport v. PERB,* 264 N.W.2d 307, 314 (Iowa 1978). The responsibility to direct others must be substantial and pervasive enough to make the employee a part of management, not simply a leadman or straw boss. *Id.* at

322. The title a position carries has little bearing on whether it is supervisory. It is the function, rather than the label, which is significant. *Id.* at 314.

Here, the parties agree that employees in the classifications of Working Foreman I and Working Foreman II are not true supervisors in the section 20.4(2) sense, but are instead lead workers eligible for inclusion in the unit. As mentioned above, these classifications have been included in the unit since at least 2006, due to the parties' recognition that they are not excluded by section 20.4. Upon inquiry by the ALJ, Kilgore acknowledged that he has no actual knowledge of the functions performed by employees in these classifications or evidence that they were in fact supervisory employees, but that his objection was based solely on their titles and his assumptions concerning what their duties and functions must be. Under these circumstances, where the parties with knowledge of the actual duties and functions of these employees agree that they do not possess or exercise true supervisory authority, where the employees are not specifically excluded by the 1977 description and have been treated as within the unit for years, and where the objection is based upon nothing more than the job titles and unsubstantiated assumptions about their duties, we conclude that the objection is without substance and should be overruled.

Ruling

Having considered all of what we understand to be Kilgore's objections, whether specifically discussed herein or not, we conclude that none are of merit in this case. The objections are accordingly overruled and dismissed.

Dated at Des Moines, Iowa, this 6th day of August, 2015.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: */s/Michael G. Cormack*
Michael G. Cormack, Chair

*/s/ Janelle L. Niebuhr*
Janelle L. Niebuhr, Board Member

*/s/ Jamie Van Fossen*
Jamie Van Fossen, Board Member

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