

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF WAUKEE,)	
)	
Public Employer,)	CASE NO. 102747
)	
and)	
)	
CHAUFFERS, TEAMSTERS &)	
HELPERS, LOCAL 238,)	
)	
Petitioner.)	
)	

DECISION

On October 10, 2022, the Teamsters Local Union, No. 238 (Teamsters) filed a combined unit determination/representative certification petition the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.13 and 20.14. The City of Waukee (City) resisted the petition alleging the sergeants employed by the City of Waukee Police Department (Department) are excluded from collective bargaining as they are supervisory employees as defined by Iowa Code section 20.4.

An evidentiary hearing was held on November 28, 2022. Jill Hartley entered an appearance on behalf of Teamsters. The City was represented by Matthew Brick. Parties were afforded the opportunity to present testimony and submit evidence at hearing. Both parties filed post-hearing briefs on January 13, 2023.

FINDINGS OF FACT

The City and Teamsters agree to the following bargaining unit composition:

Included: All full-time police officers and civilian positions of the Waukee Police Department.

Excluded: Police chief, captains, confidential secretary and other supervisory personnel.

Neither party presented arguments in favor of or against classifying the sergeants as confidential employees and therefore the only matter at issue is the classification of sergeants as supervisory employees under Iowa Code section 20.4.

Employees of the City including those working in the Police Department were represented by the Communications Workers of America, Local 7102, AFL-CIO until 2020. In 2020, members of the bargaining unit voted to decertify Communications Workers of America, Local 7102 as their bargaining representative following a recertification election. Sergeants were included in the bargaining prior to the 2020 recertification vote and were covered by the collective bargain agreement (c.b.a).

The Waukee Police Department (Department or WPD) is a para-military style organization with three divisions. The department was led by Police Chief John Quinn at the time of the hearing. WPD employs three fulltime lieutenants. A single lieutenant leads the administration, investigation, and community protection division. Waukee employs seven sergeants. A single full-time sergeant is assigned to each administration division and investigations divisions. The community protection division utilizes five full-time sergeants. Within

community protection division four sergeants are assigned to community protection and one sergeant is designated as a School Resource Officer (SRO).

Sergeant Hector Arias began employment with Waukeee in 2014 and was promoted to sergeant in 2016. Sergeant Arias has served as a sergeant in Community Policing, Investigations, and Community Protection. He is currently serving as sergeant leading the school resources officer unit within the community protection division. Sergeant Arias was the only witness called by Teamsters during the hearing.

At the time of the hearing John Quinn was the police chief employed by the city of Waukeee. Chief Quinn began serving as Waukeee's chief of police in 2014. Chief Quinn testified that sergeants are required to take a leadership course covering operations and expectations, human resources, and leadership through the City of Waukeee. Chief Quinn teaches the portion of the course on leadership. Sergeants are also required to attend training for police command referred to as SPSC throughout testimony. Chief Quinn testified this training takes 10 weeks at a cost of \$5,000-\$6,000 per participant.

The city of Waukeee job description for police sergeants describes the purpose of the job as follows:

“A Waukeee Police Sergeant supervises a subordinate of police officers engages in law enforcement and crime prevention for the safety and protection of life and property in the City of Waukeee during general patrol and/or specialized work in the field or station.”

Exhibit 1

During testimony Sergeant Arias indicated his current assignment as an SRO requires him to act as a supervisor for at least twenty-five percent of his day. (Tr. At 17). In this role he determines the appropriate time for training and assignment of officers to schools. The assignment of officers to schools is usually based on seniority. Unless there is a problem, which is typically not the case, Sergeant Arias allows officers to select their school based on seniority.

“So, if I have an SRO that has been an SRO for three years to one, so what I’ll do is I’ll give them the opportunity pick what school they want. *Hearing Transcript (Transcript) pg. 17 line 9-12*

...

And that’s barring that the school doesn’t have a problem with that officer being in that building.”
Transcript pg. 17 Line 22-24.

There are no minimum staffing requirements for SRO’s. Sergeant Arias gives daily direction to the other SRO’s in the form of reminders to remain visible but also makes direction based on complaints or other needs that may arise, such as greater attention to traffic. Sergeant Arias stated he typically lets the SRO’s run their own schools. He is the coordinator and frequent point of contact for the school district in regards to needs or complaints about SRO’s. Sergeant Arias indicated in testimony he may work with officers to increase visibility within their buildings not just in classrooms and that is sometimes being directed to the officers by him at the request of the school administration.

Sergeant Arias allocates resources based on the needs of a growing community.

“So, you know, a growing community, growing schools, sometimes we have some huge traffic issues concerning about drop-off and pickup in all the buildings, so I work with the officers and encourage them to prioritize what is the biggest issue.”

Transcript pg. 19 lines 14-19

....

“...so I’ll direct that...that work like that.”

Transcript pg. 20 line 3

Sergeant Arias tries to make sure the SRO’s do as much training as possible during summer months or at the very least to make sure all four SRO’s are not in training at the same time.

Waukee’s Police Department frequently contracts with local high schools to provide security, emergency response, and coordination of those resources for special events such as high school football games. A member of the Waukee police department serves as the coordinator for these events, ideally this is a sergeant, although a senior patrol officer may stand in for a sergeant if necessary. Exhibit 3¹ submitted by the City indicates eight individuals were coordinated by the Waukee Police Department on a football game occurring on September 16, 2022. At this event two deputies from the county (Dallas) and one officer from the City of Clive augmented the Waukee Police personnel.

¹ When filing the post hearing brief, the City included an additional page to the ICS documentation found in the City’s Exhibit 3 admitted at hearing. The additional page is labeled “GENERAL MESSAGE (ICS 213)” and contains a box labeled “7. Message.” The board did not consider this information when determining the outcome of the case as it was not properly admitted. The board considered the information and testimony submitted at hearing sufficient to rule sergeants in Waukee police department are supervisors. While the additional evidence would certainly make the Cities case stronger it is not outcome determinative. Therefore, the board chose to proceed with evidence accepted at hearing, rather than reopen the record.

Sergeant Arias described the officers as volunteers, however he then proceeded to describe the structure by which the non-Waukee personal were paid directly instead of through the city. Although, not entirely clear through testimony the Board assumes the Waukee Police employees volunteer to work at the special events and are not directed, but the city does compensate them.

Sergeant Arias described himself during testimony as the supervisor who is charged with briefing the individuals prior to the game. He further indicated he would determine where to place individuals in regards to gates and the spectator stands depending on the size of the game. Sergeant Arias is also tasked with requesting radio channels from the Waukee Police Department he also requested an additional channel from Dallas County to enable communication with personal who had been supplied by the county and the neighboring City of Clive.

Chief Quinn, testified sergeants are expected to and do deploy resources. Specially for traffic enforcement a sergeant may deploy forces according to their judgment and chosen emphasis.

“He can assign locations, north or south, or whatever designation inside the City of Waukee as to where he wants to place those resources, the type of enforcement that would be conducted.”

Transcript page 84 lines 10-19

...

“They have oversight for the adherence to policy, procedure, and then they have the discretion there, and oversight over the officers associated with charges that can be filed; coordination of activities, such as if there is an incident for a response that requires multiple

officers, sergeants can take control of those situations, deploy resources, then make decisions.”

Transcript page 85 lines 10-15

The Board comes to the conclusions that there are significant amounts of time in which the sergeants are the only supervisors on duty. There are three full time lieutenants employed by the City. Each lieutenant leads a division. Testimony and the org chart indicate each lieutenant oversees their division. Sergeant Arias testified that while he was serving as a sergeant within the patrol division he could make staffing adjustments to cover a shift if he didn't want to wake the lieutenant at 2:00am. Throughout his testimony Sergeant Arias described interaction as an SRO with Lieutenant Cunningham who leads the community protection division but no other lieutenant when the matter concerned SRO duties. Chief Quinn described sergeants as a shift commander. With only three lieutenants employed by the City it would be rather difficult to facilitate the 24/7 coverage required of the Waukee Police Department with a lieutenant on duty.

Although the record does not describe specific hours for lieutenants the board comes to the logical conclusion that a lieutenant is not on duty at all times and therefore there are significant amounts of time, likely during the midnight shift in which a sergeant is the highest-ranking officer on duty.

Exhibit 2 is an excerpt from the Waukee Police Department Directive. Item K subparagraph a describes the authority of the Chief or a designee to implement the emergency suspension, including the requirement to turn in a badge and firearm. Sergeant Arias in testimony indicated a sergeant does have this

authority although he has never been forced to evoke this power. Chief Quinn also testified supervisors have the authority to invoke an emergency suspension if an officer is physically or emotionally unable to carry out their duty.

CONCLUSIONS OF LAW

The issues in this combined unit determination/representative certification case is whether the Waukee Police Department sergeants are supervisors within the meaning of Iowa Code section 20.4(2).

The Public Employment Relations Act (PERA) is written in broad terms to allow a large number of public employees to be eligible for coverage under its provisions. *See Iowa Ass'n of Sch. Bds. v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987); *see also City of Eagle Grove*, 2012 PERB 8459 at 6. The Board, therefore, interprets Iowa Code section 20.4 exclusions narrowly to accomplish that objective. *See City of Eagle Grove*, 12 PERB 8459 at 6. The party asserting the exclusion bears the burden of establishing the exclusion applies. *Id.* at 7. In this case it is incumbent upon the city to establish the exclusion applies.

Iowa Code section 20.4(2) defines a “supervisory employee” as:

...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...

The statutory definition of a supervisor is written disjunctively. Therefore, an employee’s authority to accomplish any one of the enumerated functions is

sufficient to classify the employee as a supervisor. *See State of Iowa Dep't of Personnel v. PERB*, 560 N.W.2d 560, 562 (Iowa 1997); *see also City of Davenport v. PERB*, 264 N.W.2d 307, 314 (Iowa 1978). In the case at hand, the Board declines to address every argument presented by the parties and instead limits our decision to clearest example of supervisory authority enumerated by Iowa Code section 20.4(2).

The employee must exercise the function in reality, not merely on paper. *See City of Davenport*, 264 N.W.2d at 313; *see also City of Des Moines*, 2009 PERB 7933 at 66. The statute requires evidence of actual supervisory authority translated into “tangible examples.” *City of Davenport*, 264 N.W.2d at 314. The question of whether an employee is a supervisor 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.” *See City of Davenport*, 264 N.W.2d at 313; *see also City of Des Moines*, 2009 PERB 7933 at 66.

To rise to the level of supervisory status, the statute requires that for each enumerated function the employee “1) have authority 2) to use independent judgment 3) in performing such supervisory functions 4) in the interest of management.” *See City of Davenport*, 264 N.W.2d at 314. These requirements are conjunctive, meaning all four requirements must be established for any one function to rise to the level of supervisory status. *Id.*

In making these determinations, the courts and Board have developed the

term “leadworker,” which recognizes a job within an employer’s operation designed to provide a leadership role necessary to support and maintain management’s interests. *See City of Council Bluffs*, 2000 ALJ 6038 at 5; *see also City of Davenport*, 264 N.W.2d at 319. However, while employees defer to leadworkers’ role and work experience to complete work established by management, leadworkers possess less authority than that of a true supervisor. *See City of Davenport*, 264 N.W.2d at 319.

The status determination depends upon how completely the responsibilities of the position identify the employee with management. *Id.* For supervisory status to exist, this identification must be substantial. *See City of Council Bluffs*, 200 ALJ 6038 at 5. As such, repetitive or rote tasks are not considered supervisory nor are functions requiring little more than the use of common sense. *See City of Davenport*, 264 N.W.2d at 314. “An individual who merely serves as a conduit for orders emanating from superiors acts routinely.” *Id.*

The City demonstrated sergeants are supervisory and should therefore be removed from the bargaining unit prior to a certification vote. There is sufficient testimony supporting the conclusions sergeants employed by the Department are required to use independent judgment in the deployment and usage of resources. These activities go beyond routine adherence to a policy or norm and require the sergeants to utilize independent judgment.

Direct and Assign

Chief Quinn compellingly testified sergeants are expected to use independent judgment in the assignment of their officers and make decisions on the deployment and utilization of resources based on their independent judgment.

In the case at hand, Chief Quinn's testimony that sergeants were expected to determine how and where to deploy resources based on the priority the Sergeant placed on that particular shift. This is especially evident in the patrol division where sergeants would determine which part of the city patrol officers would be placed and what type of enforcement for that particular shift should be emphasized. Furthermore, Chief Quinn's testimony indicated sergeants are expected to make instantons decision in regards to tactics, deployment and level of response regarding the number of officers for situations that may arise.

This demonstrates actual use of independent judgment in the assignment of personal in advancing the interest of management beyond executing a prescribed set of orders dictated by policy or senior command.

Sergeant Arias as a sergeant and supervisor of the SRO's determines the best time for training, attempts to arrange for the training to occur during summer hours and tries to avoid scheduling all four officers for training. If an officer is unavailable he will ask for volunteers or cover the school himself. Arias testified there are no minimum staffing requirements for SRO's and there is no evidence Sergeant Arias is merely following his lieutenants' orders. The Board

finds this demonstrative evidence of Sergeant Arias using his judgment to determine placement of SRO's and not simple adherence to a set policy.

Even Arias's decision to allow SRO's to select buildings based on seniority appears to be a supervisory decision to allow subordinates a choice in their buildings in which he indicated he may but usually does not override.

Sergeant Arias also testified that traffic concerns in a growing community with growing schools lead to huge traffic problems during pick-up and drop-off and that this may require him to remind SRO's to prioritize the bigger issue.

Sergeant Arias is in reality making a judgment call whom to assign where in consideration of furthering the effective utilization of Department resources to most effectively achieve the goals of the Department. This does not appear to be as simple as plugging names into a program, and it seems clear he can at will adjust if necessary based on feed back from the superiors or the public.

The Department frequently contracts with local schools to provide emergency services during special events such as high school football games. A sergeant is the preferred officer in charge at such events. The sergeant leads a pre-event brief and determines the location of the personal, which may include individuals from other law enforcement agencies. The supervisor at these events determines the placement of individuals, responds to potential reallocation of those resources and is crucially charged with coordinating of multiple resources including communications and coordination with multiple agencies. There is no indication of a prescribed set of operating procedures and if even if there were it would be nearly impossible to responsibly prescribe reactions to the infinite

possibility of circumstance that may arise where thousands of people are gathered.

It seems overwhelming clear that the supervisor in charge at these events is charged with the responsibility to make appropriate decisions in reaction to unpredictable developments. The fact that when a sergeant is not available a senior officer fills in does not negate the fact that this role carries the weight and authority afforded a supervisor.

Chief Quinn, Sergeant Arias, and the Waukee Police Department Directive all clearly acknowledge supervisors have the authority to impose an emergency suspension of a subordinate. The fact that it has not happened does negate the reality that is a tangible example of authority. The board acknowledges that concrete tangible examples are highly persuasive, but when there is clear authority to do evoke a power, but it simply hasn't happened we believe the clearly expressed authority demonstrated in policy and testimony of all witnesses is sufficient to consider this a tangible example.

The Board finds Waukee Police sergeants authority as described in testimony more closely matches the scenario in *City of Oskaloosa v Oskaloosa Association of Professional Fire Fighters*, 95 PERB 5173 at 18. In *Oskaloosa*, captains' periodic decisions on placement of officers in public presentation and their frequent intendent command of a fire scene is quite similar to Waukee Police sergeants. Sergeants in Waukee are making independent judgment on the placement of officers in enforcement, educational, and protection scenarios.

The association argues Waukeee sergeants' decisions are routine in nature and lack independent judgment as in *City of Anamosa and Chauffer's, Teamsters & Helpers Local 238*. We disagree with the comparison and find the ALJ's decision in *Anamosa* somewhat quixotic overall. In *Anamosa*, the ALJ found the initial schedule creation routine and the sergeant merely enters the schedule into a computer program up to six months in advance. In the decision the ALJ concluded:

To the extent scheduling involves the exercise of independent judgment, the record does not disclose the criteria or basis upon which the sergeant makes the decisions. *City of Anamosa and Chauffers, Teamsters & Helpers Local 238, 2020 PERB 102251 at 22.*

The requirement that a city delineate complex and detailed orders to lay out how a decision should be made is in reality the antheses of granting authority and independent judgment. In the case at hand PERB believes the very lack of detailed instructions in delineated policies and the compelling testimony from both witnesses indicating choices and individual thought process set it well apart from *Anamosa*.

In *Linn County and International Brotherhood of Electrical Workers, Local 204, 2014 PERB 8719*, sergeants reacted to emergency situations by adherence to a "very detailed" and prescribed set of policies and procedures. Sergeants were required to consult senior staff when serious events such as homicide arouse. We do not find that to be the case in this matter.

While the Board should interpret Iowa Code section 20.4 narrowly as directed by *Eagle Grove*, the Board believes there must be balance with reality;

and the lack of concrete determination itself may indicate the delegation of decision-making authority.

The status determination depends upon how completely the responsibilities of the position identify the employee with management. For supervisory status to exist, this identification must be substantial. The record and testimony are sufficient to demonstrate Waukee Police sergeants have the authority to deploy resources, make decisions in the interest of management of the Department, and are identified by superiors, subordinators, job descriptions, and the public as leaders and supervisors.

ORDER

The Teamsters Local Union Local 238 combined unit determination/representative certification petition filed on October 3, 2022 is hereby DISMISSED.

DATED at Des Moines, Iowa this 7th day of April, 2023.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Board Member



Cheryl Arnold, Board Member

Filed electronically.
Parties served via eFlex.