

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF URBANDALE)	
Public Employer,)	CASE NO. 102744
)	
and)	
)	
URBANDALE POLICE SERGEANTS)	
ASSOCIATION,)	
Petitioner.)	

DECISION

This case is before the Public Employment Relations Board (PERB or Board) on Urbandale Police Sergeants Association’s (“Association”) combined petition for unit determination/representative certification filed on October 3, 2022. Pursuant to Iowa Code §§ 20.13 and 20.14, the Association seeks a determination of a bargaining unit comprised of all certified peace officer employees of the City of Urbandale Police Department holding the rank of sergeant and excluding all employees of the City of Urbandale Police Department who do not hold the rank of sergeant. The City of Urbandale (“City”) asserts this classification is supervisory and is thus excluded under Iowa Code § 20.4(2) and/or are representatives of the employer and excluded as managerial employees.

Pursuant to due notice, an evidentiary hearing on the petition was held on January 25, 2023. The parties were represented by Ann Smisek for the City and Kellie Paschke for the Association. Exhibits 1 through 17 for the City were

received into evidence. Exhibits A through M for the Association were received into evidence. Witnesses Rob Johansen, Matt Gausman and Chad Underwood all testified. Post-hearing briefs were filed by each party on March 13, 2023. Based upon the record, and having considered the parties' arguments and briefs, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The City is a public employer within the meaning of Iowa Code § 20.3(10). The Urbandale Police Department has a paramilitary organizational structure, including the existence of paramilitary chains of command. Rob Johansen has been the Chief of Police ("chief") since December of 2017.

The Department is divided into four divisions; the Investigation Division, the Patrol Division, the Support Services Division, and the Office of the Chief of Police. All of the divisions, excluding the Office of the Chief of Police, are headed by a police captain ("captain"). There are 10 police sergeants ("sergeants") beneath the three captains. Six of the sergeants are assigned to the Patrol Division; two of the sergeants are assigned to the Investigations Division; and two of the sergeants are assigned to the Support Services Division. Beneath the sergeants there are a total of 44 police officers ("officers or detectives") between all three divisions when the Department is fully staffed.

Chain of command is established by City policy and consists of the following in descending order: Chief, Captains, Sergeants, Officers.¹ If the Chief and all of the captains are absent, the City's policy provides that the highest

¹ Exhibit 6.

ranking sergeant will be in command and have the ability to act on behalf of the Chief of Police.² An officer is not allowed to act in this capacity. According to policy, if the captain from a division is absent, the senior sergeant from the division is in command.³ It is a regular occurrence that a captain from a division may be absent, on vacation or otherwise, requiring the senior sergeant to assume command.

The job position questionnaire for sergeant includes “[d]irect supervision and evaluation of sworn law enforcement officers and civilian personnel during the execution of their operational and administrative related duties ...”⁴ Patrol shifts are not operated without a sergeant on duty. If a sergeant is unavailable to supervise a patrol shift, a captain would be assigned to provide that supervision. Supervisory staff attend staff meetings each quarter, including sergeants.⁵

Sergeants are responsible for directing the work of the officers or detectives they supervise. Sergeants are heavily involved in the scheduling of daily assignments for the officers or detectives. Sergeants are responsible for preparing work schedules for them and providing work directions to them.

Sergeants are responsible for managing vacation time off requests, training time off, or other time off taken by the officers. Time off requests are approved

² *Id.*

³ *Id.*

⁴ Exhibit 2.

⁵ Tr. 62: 7-14.

by the sergeants and do not require additional approval by a captain or the chief. Sergeants are able to deny vacation requests if need be.⁶

Management of the officers' daily workday assignments may also involve assigning overtime. Sergeants are responsible for calling in officers for overtime if shift minimums need to be met. However, in the Patrol Division, overtime procedures are governed in part by a memorandum of understanding with the Union. Sergeants will also determine whether to hold officers over their shift end times in order to address a critical situation, or, the sergeant could authorize an officer to stay late and complete casework or paperwork that may need to be completed during overtime hours.

As part of their daily work, sergeants are responsible for reviewing all criminal investigation reports. This includes reviewing a report that an officer or detective drafted to ensure that it is completed properly. Once reviewed, the sergeant signs off with their approval of the officer's report. This same process of review is followed by a sergeant when an officer writes citations or written warnings for traffic violations. A sergeant can also give their approval of arrest warrants and search warrants.

Sergeants have discretion in how they run their shifts and are required to have squad rules which are available to their officers so that the officers under their command know what expectations are required of them. Each sergeants'

⁶ Tr.123: 18-25.

squad rules may vary based upon the discretion of the sergeant.⁷ A sergeant has discretion on what cases to assign a certain detective to look further into.⁸

Sergeants are responsible for completing Roll Call sheets for each shift. Each Roll Call sheet lists each of the officer work assignments the sergeant has made for the shift. Sergeants assign what car the officers are going to be driving, what areas of the city the officers will be patrolling, and whether specific officers are in any training, have extra work assignments or other information that should be passed on to the next watch commander.⁹ The Roll Call sheet will also list if there is a specific area of the city where the officer has been directed by the sergeant to work on traffic enforcement, for example.¹⁰ Sergeants assign the type of work (traffic enforcement vs. calls for service for example) based upon their opinions of officer productivity and past performance of the officers under their supervision. Sergeants are also responsible for performing line inspections on a monthly basis (which they must document) and have discretion to perform them at any given time. Line inspections include reviewing the officer's uniform to ensure that it is clean and presentable and reviewing the equipment an officer is using to ensure it is approved equipment. Sergeants are responsible for performing vehicle inspections according to a specific set vehicle inspection schedule.

⁷ Tr. 64: 20-25.

⁸ Tr. 116: 5-14.

⁹ Exhibit 5.

¹⁰ *Id.*

Sergeants are responsible for some types of discipline issued to the officers or detectives that they supervise. Sergeants are allowed to give verbal warnings to employees they supervise; provide input on suspension of employees; and provide input on termination of employees. Sergeants have the independent authority to temporarily suspend an officer if they find in their own judgment that an officer is unfit for duty.¹¹ It is not required that the sergeant get permission from their supervisor prior to issuing a temporary suspension to an officer.¹²

Sergeants are responsible for investigating matters that may lead to discipline of officers. City policy provides that if further investigation is needed and the violation is not likely to result in a suspension, demotion, or termination, the violation may be investigated by a designated supervisor within the division.¹³

If a matter is investigated by internal affairs, a sergeant may also be assigned to conduct the initial investigation for that matter.¹⁴ A sergeant is not responsible for deciding the finality of this type of discipline, rather, that decision is made by either the division commander or the Chief of Police.¹⁵ If a recommendation of suspension, demotion, or termination is made, the entire investigation is forwarded to the Chief for final disposition, including the disciplinary recommendation.¹⁶

¹¹ Tr. 42:13-23.

¹² *Id.*

¹³ Exhibit 10.

¹⁴ Tr. 54: 2-16.

¹⁵ Exhibit 10.

¹⁶ *Id.*

Sergeants are responsible for handling complaints they receive against officers.¹⁷ The sergeant on duty completes a complaint form if a citizen makes a complaint.¹⁸ A sergeant is responsible for determining whether an alleged complaint involves a minor issue and is handled only by the sergeant; involves a court issue which is handled through court proceedings; involves a serious issue which is handled through internal investigations; or is demonstrably false.¹⁹ Based on their own independent analysis, a sergeant is responsible for making a judgment call whether the complaint is advanced or not.²⁰

Sergeants are responsible for evaluating the performance of officers on a daily basis and by providing input regarding an officer's annual performance evaluation. Regarding annual performance evaluations of officers or civilians under their supervision, the sergeants will complete the annual employee evaluation form and forward it to the captain for review prior to presenting it to the employee that is being evaluated. Captains and the chief are responsible for reviewing the evaluations to ensure that nothing in the form is illegal and information that is included in the evaluation is documented. Final approval of the annual evaluation is given by the chief. Regarding awards or rewards, sergeants have authority to recommend a commendation or award for an officer based upon work the officer has done.²¹

¹⁷ Exhibit 10C, page 3.

¹⁸ Tr. 46:2-23.

¹⁹ Exhibit 10C, page 3.

²⁰ Tr. 46:2-23.

²¹ Tr. 54: 20-25; Tr. 55:16.

Sergeants are involved in the hiring process of an officer. When a new officer is hired, a minimum of one sergeant sits on the interview panel.²² The City is required to follow Iowa Code chapter 400 when hiring.²³ The interview panel scores are determined from an average of all three persons on the interview panel.²⁴ A sergeant is then responsible for completing background investigations, contacting prior employers, contacting references, reviewing psychological tests, sitting in with the candidate on a polygraph test, following up with interviewing a candidate if there are issues with the polygraph test, and then making a determination whether a candidate should be recommended for hire.²⁵ These recommendations are passed along to the chief. If a candidate does not pass initial screening prior to the background investigation, references check, and polygraph test, they are eliminated from the civil service list without further review by a sergeant's supervisor; however, this is determined by the three-person panel and not individually by the sergeant.²⁶ When it comes to the grievance process, sergeants are not involved in the process of investigation or adjusting grievances. Sergeants only involvement may be to accept an initial filing of a grievance from an officer.²⁷

CONCLUSIONS OF LAW

The issue in this case is whether sergeants should be excluded from bargaining unit eligibility because they are supervisory employees pursuant to

²² Tr. 56: 15-22.

²³ Tr. 88: 9-19.

²⁴ *Id.*

²⁵ Tr.57: 2-20.

²⁶ Tr. 58: 6-11.

²⁷ Tr. 46: 24-25; 47: 1.

Iowa Code § 20.4. Sergeants employed by the City of Urbandale are public employees. If it is determined that the sergeants are bargaining unit eligible, the Association argues that the creation of a new bargaining unit is appropriate rather than amending the current unit of police officers to include sergeants.

Iowa Code § 20.4 provides in pertinent 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. "Supervisory employee" means any individual having authority in the interest of the public employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or to effectively 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. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be deemed to be supervisory employees.

Iowa Code chapter 20 is interpreted to provide broad coverage for those eligible and the section 20.4 exclusions are read narrowly to promote the statute's broad application.²⁸ The party asserting the applicability of a section 20.4 exclusion must establish that the exclusion applies to the employee's position at issue.²⁹ Whether a specific employee's position is considered supervisory is a fact

²⁸ *City of Sioux City and Sioux City Policemen's Association*, 2011 H.O. 8197 at 18 (citing *IA Ass'n of Sch. Bds. v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987)).

²⁹ *City of Cedar Falls & Cedar Falls Firefighters Ass'n, Local 1366*, 06 PERB 6868 at 21; *Iowa City & AFSCME, Local 183*, 02 PERB 6353 at 5..

question involving a “case-by-case approach”.³⁰ The employee in question must have the authority to use independent judgment in performing their supervisory functions in the interest of management.³¹ The employee’s authority to accomplish any one of the enumerated functions listed in section 20.4 justifies a finding of supervisory status.³²

For each of the functions, 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.³³ The board must look to the function of the job, rather than the label of the job.³⁴ Further, the actual supervisory authority must be “visible translated into tangible examples” and the authority is not supervisory if it is “routine or clerical”.³⁵ However, “it is the existence of the (supervisory) power and not its exercise which is determinative.”³⁶ Regarding discipline, the facts must establish more than the customary right to discipline inherent in the ranks of a paramilitary organization.³⁷ The facts must establish the right to discipline within the meaning of the Iowa Code.³⁸

It is clear that sergeants do not have the authority to hire, transfer, lay off, recall, reward, promote or discharge a subordinate employee. Sergeants do not

³⁰ *City of Davenport v. PERB*, 264 N.W.2d 307, 314 (Iowa 1978).

³¹ *Id.*

³² *IA Dep’t of Pers. v. PERB*, 560 N.W.2d 560, 562 (Iowa 1997).

³³ *City of Davenport v. PERB*, 264 N.W.2d at 314.

³⁴ See *id.*

³⁵ *Id.*

³⁶ *Id.* at 312.

³⁷ *City of Muscatine and Teamsters Local 238*, 1983 ALJ 2286 at 9.

³⁸ *Id.*

have the authority to adjust subordinate employee grievances, as those are handled by either a division commander or the Chief. While a sergeant may be on the interview panel which creates the civil service list when hiring a new employee, they are just one of three persons who are ranking individual applicants. It is true that a candidate may be excluded based upon the rankings of the three persons on the interview panel; however, those persons sitting on the interview panel do not have the ultimate hiring authority, the chief does. Further, the sergeant's job duties include gathering a background check, contacting references, sitting in on and providing results of a polygraph test and preparing a packet of information for the chief to review regarding which candidate to hire are routine duties that do not provide for any exercise of independent judgment. The question in this case is whether sergeants have authority to suspend, assign, discipline other public employees, or the responsibility to direct them.

Sergeants are able to temporarily suspend officers that they are supervising based upon their independent judgment and discretion if the sergeant believes the officer is unfit for duty. The sergeant can send the officer home, for not more than one day, and they are not required to notify a captain or the chief prior to exercising this discretion. Sergeants can also issue an oral disciplinary warning to a subordinate employee. This authority to discipline requires the sergeant to exercise independent judgment based upon the circumstances of the situation and his subordinates' actions or inactions, as the case may be.

Sergeants are also in control of directing or assigning work, approving or denying time off based upon the needs of the City, ensuring that minimum staffing standards are followed, and scheduling certain subordinates to certain types of cases. Sergeants exercise independent judgment when they are assigning work to the officers or detectives, as they assign what car an employee is using, what area of the city they are working in, and what kind of duties the officer will be completing (i.e. traffic enforcement vs. taking calls for service). This independent judgment involves a sergeant's opinion on the productivity of their officers and what that specific officer's strengths may be.

Further, each sergeant is responsible for setting forth their own squad rules. While the sergeant's squad rules cannot violate City policy or Iowa law, they are allowed discretion in deciding what those rules will be and providing those rules to their subordinates so the officers or detectives understand how that squad will be run under the authority of the individual sergeant. An example of these rules may be whether a sergeant will decide to assign work by seniority, by productivity, or some other factor. These are managerial decisions about the use and allocation of resources, with the sergeant acting in the best interest of the public employer. These decisions are made by each sergeant based upon their own independent judgment.

The approval of time off requests are done by sergeants based upon the sergeant's discretion of manpower needed. Approval for overtime, depending on the situation and need for it, is completed by sergeants without approval of

another supervisor. This is a tangible example of a sergeant exercising his or her independent discretion in the interest of the public employer.

As such, in the areas of direction, suspension, discipline and assignment, sergeants are supervisors within the meaning of Iowa Code § 20.4. The record demonstrates tangible examples of sergeants having the authority to exercise supervisory duties and responsibilities that are neither temporary or routine. Therefore, sergeants are excluded from bargaining unit eligibility as they are supervisory employees pursuant to Iowa Code § 20.4.

ORDER

IT IS HEREBY ORDERED that the Association's combined petition for unit determination/representative certification 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.