

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF:

CITY OF CEDAR FALLS,  
Public Employer,

and

AFSCME IOWA COUNCIL 61,  
Petitioner.

CASE NO. 100741

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RULING

On June 3, 2016, AFSCME Iowa Council 61 filed the above-captioned combined bargaining unit determination/representative certification petition, seeking PERB's determination of a bargaining unit composed of police captains and lieutenants employed by the City of Cedar Falls. The City resisted AFSCME's petition, asserting that the police captains and lieutenants are supervisors excluded from collective bargaining under Iowa Code chapter 20 and, alternatively, that to the extent the employees at issue were within chapter 20's coverage, they would not constitute a unit appropriate for purposes of collective bargaining.

Evidentiary hearing before a PERB administrative law judge concerning the unit determination aspects of the petition, originally scheduled for July 5, 2016, was continued and rescheduled at least twice upon the parties' joint motion and was ultimately conducted on September 29, 2016. The hearing is reflected in a 249-page transcript of the testimony elicited before the ALJ, who also admitted over 250 pages of exhibits offered by the City as well as more

than 100 offered by AFSCME. Both parties submitted post-hearing briefs to the ALJ, the last of which was filed November 1, 2016.

On January 30, 2017, the ALJ issued a proposed decision and order, concluding that the captains and lieutenants were not supervisory employees excluded from chapter 20's coverage and that a separate bargaining unit of the employees in those classifications was appropriate. The City filed an intra-agency appeal from the proposed decision on February 13, 2017. Oral arguments to the Board were scheduled for June, 2017, but were subsequently continued until August 22, 2017 on the parties' joint motion.

On August 8, 2017, the City filed an application to submit additional evidence on appeal in accordance with PERB subrule 621—9.2(3). In its application the City stated, in relevant part:

6. [...] On January 16, 2017, the City Council adopted a resolution setting a goal to conduct a city-wide pay plan study for all non-bargaining positions and voted to fund the study in February 2017. The City enlisted an outside consultant, Carlson Dettmann Consulting, L.L.C, to perform the study.

7. As part of the study, City employees were required to complete Job Description Questionnaires describing their job duties and return them to their department heads by June 30., 2017.

8. In the Job Description Questionnaires, all of the City's Captains and Lieutenants described their supervisory work, including their involvement in assigning, directing and disciplining employees.

9. The Captains and Lieutenants independently drafted their duties on the Job Description

Questionnaires and the forms were not pre-filled with duties.

On the date of the filing of the City's appeal, PERB rule 621—9.2(20) provided, in relevant part:

**621—9.2(20) Appeals to board.**

**9.2(3) Hearing.** On appeal the board shall utilize the record as submitted before the administrative law judge but may, upon application of a party, order that additional evidence be taken on appeal if it is shown that the additional evidence is material and that there were good reasons for the party's failure to present it before the administrative law judge. . . .

The City asserts that we should allow the submission of these Job Description Questionnaires because the information on them is material to the issue before the Board and the questionnaires could not have been submitted as evidence before the ALJ because they were not in existence at the time.

We agree that the actual functions of the captains and lieutenants are material to the issues presented on appeal. One of the fighting issues in this case is whether captains and lieutenants are supervisory employees within the meaning of Iowa Code section 20.4(2)—a determination which necessarily turns on the employee's regular functions and responsibilities. *See, e.g., City of Davenport v. PERB*, 264 N.W.2d 307, 315 (Iowa 1978). Evidence concerning these regular functions and responsibilities is thus plainly material, and we rely on the accuracy of the City's representations concerning the nature of the evidence it now seeks to submit.

But we cannot conclude that the City has shown the presence of the second prerequisite required by the rule—that there were good reasons for the City’s failure to present the proffered evidence before the ALJ.

We do not question the accuracy of the City’s representation that the completed questionnaires themselves did not exist at the time of the hearing. But we are not concerned with whether the City could have presented the evidence in that particular form (*i.e.*, by papers containing written descriptions of the employees’ duties), but instead with the question of whether good reasons for the City’s failure to present the evidence itself (*i.e.*, statements of the employees describing their duties) to the ALJ. We think the City tacitly recognizes this distinction in its application by its assertion that “[t]he *information* on the Job Description Questionnaires is material and central to the issue before the Board. . . .” (Emphasis added.)

The ALJ found that three captains and eight lieutenants were potentially affected by AFSCME’s petition. The transcript of the hearing before the ALJ reveals that two captains and three lieutenants testified and were subject to cross-examination by the City. The City’s application contains no claim that the other captain or lieutenants were unavailable to testify, either in person or by telephone, which leads us to conclude that the City could have presented the same information the employees entered on the questionnaires at the hearing, had it elected to do so. Nor is there any claim that the functions, responsibilities or authority of the captains or lieutenants have materially changed since the evidentiary hearing.

The fact that an outside consultant's study has now produced employee statements which could have been obtained by the City in preparation for and then presented at the hearing is not, in our view, a good reason for the City's failure to present that evidence before the ALJ.

The City's application to submit additional evidence on appeal is consequently DENIED.

DATED at Des Moines, Iowa, this 16th day of August, 2017.

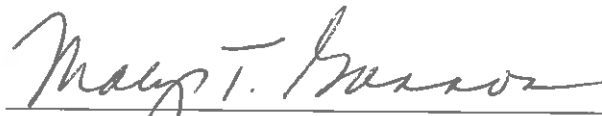
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