

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
CITY OF DENISON, Public Employer/Petitioner,)	CASE NO. 102443
and)	PROPOSED DECISION AND ORDER
DENISON POLICE ASSOCIATION, Certified Employee Organization.)	

On June 10, 2020, the City of Denison (City) filed an amendment of bargaining unit petition with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.13 and PERB rule 621—4.6(20). The petition seeks to amend the existing bargaining unit of employees represented by the Denison Police Association (Association) to exclude the positions of deputy clerk and sergeant pursuant to Iowa Code section 20.4. The Denison Police Association argues these positions are appropriately included in the unit.

Pursuant to notice, a hearing on the amendment of unit was conducted before the ALJ by video conference on October 13, 2020. Matt Brick represented the City. Jay Smith represented the Association. The parties submitted post-hearing briefs on December 17, 2020. Pursuant to Iowa Code section 17A.14(4), the ALJ took official notice of the original PERB certification and bargaining unit description and all subsequent amendments for the unit as listed in PERB Case Nos. 3564, 4594, and 8323.

FINDINGS OF FACT

The City of Denison is a public employer within the meaning of Iowa Code section 20.3(10), and the Denison Police Association is an employee organization as defined in Iowa Code section 20.3(4).

In 1987, the Denison Police Association/Service Employees International Union was certified as the exclusive bargaining representative for certain employees of the City Denison police department. The bargaining unit was subsequently amended in 1992 to include additional City employees outside the police department. The unit's certification was also amended to reflect the Denison Police Association as the certified employee organization in 2010. The current bargaining unit as represented by the Denison Police Association is described as follows:

INCLUDED: Full time and part time Police Department employees including, Probationary Officers, Patrol Officers, Sergeant, Lieutenant and Police Department Communications Operators, full time City Maintenance Department employees, assistants to City Clerk, Building Inspector.

EXCLUDED: Chief of Police, Assistant Chief of Police, Secretary to Chief of Police, Street Commissioner, Parks and Recreation employees, temporary employees, supervisors, management officials and all others excluded by Section 4 of the Act.

Among other departments, this unit includes employees in the city clerk's office and the police department, both of which are at issue in this case.

City Clerk's Office

The city clerk's office includes the positions of the city clerk, the administrative assistant, and the assistant clerk/accounting clerk 1 and 2.¹ The office also has a seasonal part-time office assistant during some summers. The city clerk is an administrative or executive officer for the city. The city clerk is appointed by city council. The city clerk works closely with the city council, the city manager, and the accounting clerk.

Lisa Koch is the current Denison City Clerk and has served in that role for ten years. The main responsibilities of the city clerk relate to handling the financial records for the city, maintaining all city records, supervising staff, and attending and recording city council meetings including closed sessions.

In the role as city clerk, Koch has prepared policies for the city. She put together a procurement policy for the approval of council. This policy detailed how departments process purchases. Koch also helped create a personnel handbook for the city in 2015. She served as a conduit while the department heads looked through previous handbooks and made changes. Koch submitted the revised personnel handbook to the city council.

Koch also puts together a budget for the city. She works with each department head to determine the amounts needed for their budget. The department heads give the input necessary for Koch to compile each

¹ The position of assistant clerk/accounting clerk 1 and 2 were referred to a variety of ways throughout the hearing and in exhibits. For clarity and to differentiate between the assistant/accounting clerk position and the administrative assistant position, the assistant clerk/accounting clerk 1 and 2 positions will be referred to as "accounting clerk" throughout the decision.

department's budget. Then she prepares the overall budget and submits that to city council. Koch also reports on the budgeting to the city council and the State.

Koch is also involved in the procurement and contracts for the City. If any department makes a large enough purchase, the request goes through her office. Koch looks at the quotes, determines the best quote for purchase, and takes the expenditure to council for approval.

As the city clerk is involved in the financial matters of the city, the city council includes the city clerk on the labor negotiations team. The city clerk also has access to personnel files and closed session recordings.

The city clerk prepares the documents for city council meetings. During the meetings the city clerk takes roll. She attends and takes minutes for city council meetings. She also attends the closed session meetings of city council. The city clerk maintains documents related to the meetings and publishes documents when needed.

As the head of the clerk's office, the city clerk also supervises the rest of the office. In Koch's ten years with the city, the city clerk's office has included the administrative assistant, an accounting clerk, and occasionally the office has had a seasonal part-time office assistant. The accounting clerk assists the city clerk in carrying out some of the duties of the clerk's office. The accounting clerk prepares the print reports for each department at the end of the month. The accounting clerk also processes payroll.

Terra Sell, the current accounting clerk 2, has worked for the city clerk's office since February 2016. The City hired her as an administrative assistant for

the city clerk's office. She then moved into the role of accounting clerk 2, and Koch is her immediate supervisor.² Generally, the accounting clerk participates in the processing of the accounting system records and the preparation of fiscal reports.

A variety of city clerk responsibilities do not involve or include the accounting clerk. Sell does not assist Koch in preparing the budget or submitting it to the city council. She does not assist Koch with accounting and reporting, but Sell does input data into a computer program to generate certain reports. She does not assist Koch with large purchases or procurement, although she does handle some office supplies. Sell does not aid Koch in supervising performance contracts. Sell does, however, input purchase orders and invoices from other departments.

The city council has adopted ordinances related to the job duties of the city clerk. This ordinance was codified in 2010 and has been most recently amended in 2017. The ordinance states in relevant part: "The Clerk, or in the Clerk's absence or inability to act, the Deputy Clerk has the powers and duties as provided in this chapter, this Code of Ordinances and the law." The "deputy clerk" as described in the ordinance refers to the accounting clerk 2 position, which is currently filled by Sell. As reflected in the ordinance and testimony, if the city clerk was absent or unable to act, the accounting clerk would fill in for

² The contract between the City of Denison and the Denison Police Association in the record indicates there are four possible City Hall positions in the bargaining unit by providing salaries for those positions. Those positions include the "office/administrative assistant," the "assistant clerk/accounting clerk 1," the "assistant clerk/accounting clerk 2," and the part-time office assistant. The only difference between the accounting clerk 1 and 2 would be the skill and experience level required for the position.

tasks such as labor negotiations, budget preparation, or preparation of fiscal policies. Over the last couple of years, Sell has filled in for Koch at a city council meeting, but even in that role, Sell did not prepare any of the documents. Koch prepared everything for the meeting, and Sell simply attended in her absence.

Police Department

The police department in the City of Denison consists of dispatchers, eight patrol officers, three sergeants, Sergeant Cardenas, Sergeant McGinnis, and Sergeant Melby, an assistant chief, Officer Peters, and a chief of police, Chief Schaffer. Although listed in the unit description, the department does not presently employ lieutenants. The job description for sergeant states the sergeants directly supervise patrol officers assigned to his or her shift and indirectly supervise all other department employees of a lesser rank. The assistant chief, the sergeants, and the patrol officers all patrol the city, but they do not have assigned areas of the city to patrol.

The chief, assistant chief, and sergeants generally engage in weekly supervisory meetings. This supervisory group meets to discuss various aspects of the department, including hiring of officers, promotions of officers, and discipline of officers. When hiring a patrol officer, the prospective employees engage in two panel interviews.³ The chief conducts one interview and the assistant chief and sergeants conduct the other interview. The candidates also perform a physical and written test. After this process, the supervisory group

³ When hiring dispatchers generally one of the sergeants or the assistant chief serves on the interview panel.

discusses the applicants. During that discussion, the group seeks a consensus and recommends that person for hire to city council. The chief would make the applicant a conditional offer and the sergeant would conduct a background check during the hiring process. In the supervisory group, the chief would have the final say of whom to recommend even if a sergeant disagreed on the recommendation. When hiring patrol officers in the past, a sergeant gave input on the candidates and suggested hiring one applicant. The rest of the group disagreed and that person was not hired. Ultimately, city council would have to approve the hiring of the individual.

When promoting a patrol officer to a sergeant, the supervisory group goes through a process similar to the hiring process. After reaching consensus, the supervisory group makes a recommendation to city council. Neither the chief nor the sergeants have the final say in hiring because City Council makes the final decision.

This supervisory group within the police department also discusses discipline of patrol officers. The supervisory group seeks consensus to determine the appropriate discipline for a patrol officer. At the meeting to discuss discipline the sergeants have an opportunity to recommend discipline. At least in one instance, however, a sergeant has made a recommendation of discipline, but that recommendation was denied. After the supervisory group discusses potential discipline and the discipline is determined, generally the sergeant most involved with the incident issues the discipline to the patrol officer. In practice, sergeants

have issued at least two written reprimands and at least two suspensions after the supervisory group determined the appropriate discipline level.

Sergeants have the authority to coach or provide verbal counseling for patrol officers. Coaching and counseling, although documented, is considered non-disciplinary. In at least one instance a sergeant has engaged in verbal counseling without waiting for the supervisory meeting. A sergeant can also temporarily suspend and put a patrol officer on administrative status in an emergency situation.

One of the sergeants in the department, Sergeant Melby, also handles scheduling of the patrol officers, sergeants, and the assistant chief. Sergeant Melby uses scheduling software and assigns people certain shifts. Pursuant to the collective bargaining agreement, there are three shifts: 6:00 a.m. to 6:00 p.m., 3:00 p.m. to 3:00 a.m., and 6:00 p.m. to 6:00 a.m. Officers can request a different shift twice a year per the contract. The police department also has a minimum staffing level of two officers on duty at all times. This requirement means that two people cover both the 6:00 a.m. to 6:00 p.m. shift and the 6:00 p.m. shift to the 6:00 a.m. shift. The three sergeants and the assistant chief serve as shift supervisors. Generally, there is one shift supervisor on duty throughout the 24-hour period. When additional staff is needed due to an upcoming event in the city, the supervisory group would discuss it and assign the additional officers necessary. Any sergeant can approve time off requests, but Sergeant Melby makes the changes on the schedule. In Sergeant Melby's absence, the chief makes these schedule changes. Time off is granted as long as the shift can

still be covered. The sergeants have the authority to call someone if needed to fill in for a shift. Although sergeants handle the scheduling and the time off requests, the chief could override a sergeant's scheduling decision.

Throughout the shifts the shift supervisors, meaning the sergeants or assistant chief on duty, work with the other officers. When a call from dispatch comes in, sometimes dispatch calls officers directly and may go to the closest officer, and sometimes the dispatch notifies the sergeant or shift supervisor. The on-duty shift supervisor can assign the officers to do work or to respond to calls. The shift supervisor would need to notify the chief, or in his absence, the assistant chief, if there was a major event or incident.

The shift supervisor also reviews officers' reports, accident reports and other reports to ensure the reports are filled out accurately. The shift supervisor looks at the status of officers' investigations. Sergeants also perform yearly evaluations of the patrol officers on their shift. The evaluations are subject to the chief's approval.

Sergeant Melby and Chief Schaffer testified that sergeants exercise independent judgment on a daily basis in their job duties. Sergeant Melby also testified that sergeants also have authority to exercise discretion in their jobs. However, Sergeant Melby noted that patrol officers also exercise independent judgment. The record lacks evidence of specific ways in which sergeants exercise independent judgment or discretion. The record also does not explain how a sergeant exercises independent judgment in a manner that is different from patrol officers.

CONCLUSIONS OF LAW

The City seeks to amend the bargaining unit represented by the Denison Police Association to exclude the positions of deputy clerk and sergeant as the City claims those positions are excluded by Iowa Code section 20.4(2). Iowa Code section 20.4(2) lists positions that are excluded from the provisions of chapter 20 and provides in relevant part:

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 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 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. *City of Eagle Grove and Teamsters Local 238*, 12 PERB 8459, at 6; *City of Anamosa and Chauffeurs, Teamsters & Helpers Local 238*, 2020 ALJ 1022510, 102251, at 13. The Board, therefore, interprets Iowa Code section 20.4 exclusions narrowly to accomplish that objective. *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.

Accounting Clerk

First, the City claims the accounting clerk position, or the “deputy clerk,” is excluded as a “deputy” or “first assistant” under Iowa Code section 20.4(2). The City also argues the accounting clerk is a confidential employee pursuant to Iowa Code section 20.3(3)(b)(4). The Association argues the accounting clerk position is appropriately included in the bargaining unit.

Pursuant to Iowa Code section 20.4(2), a “[r]epresentative[] of the public employer, including the administrative officer, director or chief executive officer of a public employer or a major division thereof as well as the officer’s or director’s deputy, first assistant, and any supervisory employees” are excluded from the provisions of Iowa Code chapter 20. “Deputy” is not defined in chapter 20, but PERB case law has interpreted the use of the term when determining whether this exclusion applies. *Clay County and Int’l Union of Operating Eng’rs, Local 234*, 11 PERB 8290, at 7. The statutory term “deputy” was held to apply to employees who, collectively with other employee categories enumerated in Iowa Code section 20.4(2) comprised the public employer’s managerial hierarchy. *Lyon County and Int’l Bhd. of Painters & Allied Trades, Local No. 246, AFL-CIO*, 80 HO 1621, at 25-26.

If it can be established that the official at issue is an administrative officer, director or chief executive officer of a public employer or a major division thereof, PERB case law has enunciated a two-prong test to determine whether an employee is a deputy and is thereby excluded. First, a party must demonstrate proof the employee at issue is a substitute with the power to act or a second-in-

command or an assistant who usually takes charge when his or her superior is absent. *City of Eagle Grove*, 12 PERB 8459, at 7–8; *Clay County*, 11 PERB 8290 at 9. Second, the employee must be a single individual who possesses the official’s full range of authority when the official is absent. *City of Eagle Grove*, 12 PERB 8459, at 7–8; *Clay County*, 11 PERB 8290 at 9. The Board has found an employee can be a deputy regardless of whether the employee has actually served as a substitute for the official at issue. *Clay County*, 11 PERB 8290 at 13. The Board has also emphasized that pursuant to the second element, a deputy is limited to one individual. *Id.*

Preliminarily, the city clerk serves as the administrative officer for the City of Denison. The question, therefore, is whether the accounting clerk serves as the deputy for the city clerk. Although the City has not demonstrated the accounting clerk usually takes charge in the city clerk’s absence, the City has shown the accounting clerk has the authority to take over the responsibilities of the city clerk. *See id.* (stating the first element does not require a showing the employee has ever actually served as a substitute). The City’s ordinances state in relevant part that “The Clerk, or in the Clerk’s absence or inability to act, the Deputy Clerk has the powers and duties as provided in this chapter, this Code of Ordinances and the law.” The “Deputy Clerk” referred to in the ordinance is the accounting clerk. *See id.* at 10 (finding the first element satisfied when the County showed the statutory provisions and certificates appointing the employees and the job descriptions stated the deputy treasurer and deputy recorder assume the duties of the office when the official is absent). In Denison,

the accounting clerk rarely fills in for the city clerk, and when she has filled in, her role has been limited. However, the city ordinance provides the accounting clerk is the substitute to the city clerk with the authority to act in her absence.

The second question is whether the accounting clerk is the single individual who possesses the city clerk's full range of authority when the official is absent. Again, the ordinance provides the accounting clerk has the powers and duties listed for the role of the city clerk in the city clerk's absence. The testimony demonstrates the accounting clerk is the sole substitute for the city clerk. In the last ten years, the city clerk's office has employed the city clerk, the accounting clerk, the administrative assistant, and a seasonal part-time office assistant. Only one person serves in the capacity of the accounting clerk, and that person alone would possess the full range of the city clerk's authority in the city clerk's absence.⁴ *See id.* at 14 (finding the County met its burden in demonstrating the deputy recorder was the deputy pursuant to section 20.4(2) as there was only one deputy recorder, but the County did not demonstrate the deputy treasurers should be excluded because there were multiple deputy treasurers and the record did not establish that either deputy treasurer assumes the full range of responsibilities in the county treasurer's absence).

⁴ The Association argues that because the accounting clerk 1 and accounting clerk 2 positions are merely delineated by skill and experience, an accounting clerk 1 could be promoted to accounting clerk 2 and thus two people would be serving in this role. Neither person would then have the full range of authority to act in the city clerk's absence. This argument is without merit. The evidence in the record demonstrates only one person has ever served in the accounting clerk position at a time. The record does not show that the City has ever had an accounting clerk 1 and an accounting clerk 2 simultaneously. Any inference there would be two people in the accounting clerk 2 position is speculative.

The City has demonstrated the accounting clerk is a deputy to the city clerk, and is thus excluded from the bargaining unit pursuant to Iowa Code section 20.4(2). As the County has proven the accounting clerk is excluded as a deputy, it is unnecessary to determine whether the accounting clerk is also excluded on the basis of her status as a “first assistant” or a “confidential employee.”

Sergeant

Next, the City argues that sergeants are excluded from the bargaining unit as “supervisory employees” pursuant to Iowa Code section 20.4(2). The City claims the sergeants are supervisory as the sergeants are involved in recommending hiring, promotions, and discipline, and the sergeants assign and direct patrol officers.

As mentioned above, PERA is written in broad terms to allow a large number of employees to be eligible for coverage under its provisions, and the Board, therefore, interprets exclusions from the Act narrowly. *City of Eagle Grove*, 12 PERB 8459 at 6; *City of Anamosa*, 2020 ALJ 102250, 102251 at 13. The party asserting the exclusion bears the burden of establishing the exclusion applies. *City of Eagle Grove*, 12 PERB 8459 at 7; *City of Anamosa*, 2020 ALJ 102250, 102251, at 13.

Supervisors are separated out and excluded from the right to collectively bargain “in order to preserve their unqualified loyalty to the interests of their employers, and to prevent the dilution of this loyalty by giving them common interest with the men they were hired to supervise and direct.” *City of Davenport*

v. Public Emp't Relations Bd., 264 N.W.2d 307, 313 (Iowa 1978). However, the supervisory status cannot be construed so broadly that persons are denied rights which PERA was designed to protect. *Id.* The determination of supervisory status is ordinarily a fact question that requires 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.” *Id.*; *City of Anamosa*, 2020 ALJ 102250, 102251, at 18.

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, lay off, 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 enumerated functions of a supervisor in the definition are listed disjunctively, meaning that if an employee possesses any of the functions, it is sufficient to classify the employee as a supervisor. *City of Davenport*, 264 N.W.2d at 314; *City of Eagle Grove*, 12 PERB 8459 at 13; *City of Anamosa*, 2020 ALJ 102250, 102251 at 18. However, the employee must exercise the functions in reality, not just on paper. *City of Davenport*, 264 N.W.2d at 314; *City of Eagle Grove*, 12 PERB 8459 at 13; *City of Anamosa*, 2020 ALJ 102250, 102251 at 18. The statute requires evidence of actual supervisory authority translated into “tangible examples.” *City of Davenport*, 264 N.W.2d at 314; *City of Eagle Grove*, 12 PERB 8459 at 13; *City of Anamosa*, 2020 ALJ 102250, 102251 at 18.

The statute requires that to qualify as a supervisor, the employee (1) has authority, (2) to use independent judgment, (3) in performing such supervisory functions, (4) in the interest of management. *City of Davenport*, 264 N.W.2d at 314; *City of Eagle Grove*, 12 PERB 8459 at 13 (internal citations omitted). These four requirements are conjunctive requirements, meaning the employee must have all of the above in the exercise of an enumerated supervisory function to meet the definition of supervisor. *City of Davenport*, 264 N.W.2d at 314. To demonstrate an employee is supervisory, a party must show the employee, by virtue of the responsibilities of the position, is substantially aligned with management. *City of Davenport*, 264 N.W.2d at 314; *City of Anamosa*, 2020 ALJ 102250, 102251, at 19.

Further, authority to perform one of the enumerated functions is not supervisory if the responsibility is routine or clerical as that means the employee is not exercising independent judgment. *City of Davenport*, 264 N.W.2d at 314; *City of Anamosa*, 2020 ALJ 102250, 102251, at 18-19. Repetitive or rote tasks are not considered supervisory. *City of Davenport*, 264 N.W.2d at 314. An employee who serves merely as a conduit acts routinely and is not supervisory. *Id.*

The employee must have the power of the enumerated functions listed in the statute or have the power to effectively recommend the exercise of the listed functions. *City of Davenport*, 264 N.W.2d at 314. Effective recommendation means a recommendation which under normal policy is made at the chief executive level or below and is adopted by a higher authority without

independent review or de novo consideration as a matter of course. *City of Eagle Grove*, 12 PERB 8459, at 14. If an employee is able to effectively recommend action regarding one of the enumerated functions listed in the statute, that effective recommendation is also enough to exclude the position as supervisory. *City of Eagle Grove*, 12 PERB 8459, at 14; *City of Anamosa*, 2020 ALJ 102250, 102251, at 19.

An employee's title carries little weight in determining whether the position is supervisory. *City of Davenport*, 264 N.W.2d at 314. An employee's regular functions and responsibilities are determinative of the employee's supervisory status. *Id.* at 315; *City of Eagle Grove*, 12 PERB 8459, at 13.

The City first claims sergeants are supervisory as they assist in or effectively recommend hiring and promotions within the department. When hiring and promoting officers, the sergeants are part of the interview panel and discuss the candidates with the supervisory group. This supervisory group includes the chief, the assistant chief, and the three sergeants. The supervisory group decides on a candidate and recommends that applicant to city council. Ultimately, the city council makes the determination of hiring and promotions. While discussing applicants during the supervisory group meetings, sergeants can provide input, and the group tries to reach consensus. If one sergeant disagrees, the chief would have the final say in choosing which applicant to recommend.

The sergeants in the Denison Police Department do not have the unilateral authority to hire or promote officers. The sergeants' role in hiring and promoting

officers as members of the supervisory group also does not arise to an effective recommendation for hiring or promotion. See *City of Anamosa*, 2020 ALJ 102250, 102251, at 20 (stating that a committee member's recommendation is not an effective recommendation unless the recommendation is adopted without input and review by other committee members and finding when a decision is made collectively, it is not an effective recommendation); see also *City of Eagle Grove*, 12 PERB 8459, at 15 (finding an assistant chief's input is not an effective recommendation). The City has not shown that sergeants have the authority necessary to classify them as supervisors for their role in hiring or promoting employees.

The City also contends the sergeants play a supervisory role in the discipline of patrol officers. Similar to the hiring and promotion process, the chief, the assistant chief, and the sergeants discuss discipline of patrol officers in a supervisory group. After the group reaches a consensus on the discipline, the sergeant that has the most knowledge of the situation issues the discipline. There is at least one example of a sergeant requesting discipline for an officer, and the chief denying the request. Sergeants do have authority to unilaterally engage in verbal counseling with patrol officers, but this is a non-disciplinary course of action. Sergeants can also temporarily suspend officers and place them on administrative status in an emergency.

The City has failed to demonstrate the sergeants have the authority necessary to classify them as supervisors when exercising their responsibilities regarding disciplining of patrol officers. Sergeants cannot unilaterally discipline

officers and their role providing input during supervisory meetings does not amount to an effective recommendation. *See City of Eagle Grove*, 12 PERB 8459 at 15 (stating an assistant chief's role in discipline was not supervisory as providing input is not an effective recommendation and the assistant chief could not independently impose discipline). The authority to issue non-disciplinary verbal warnings or counseling also does not arise to the level of playing a supervisory role in discipline. *See City of Anamosa*, 2020 ALJ 102250, 102251, at 20-21 (stating that to be supervisory based on discipline, the employee must have more authority than the power to issue a verbal reprimand). As the sergeants do not have independent authority to discipline officers and their participation in a supervisory group concerning officers' discipline does not amount to an effective recommendation, the City has not shown the sergeants are supervisory employees on this basis.

The City also claims the sergeants are supervisory as demonstrated by their scheduling or assignment of work. The City points to Sergeant Melby's responsibility in handling the schedule and the sergeants' authority to approve time off for officers as evidence of supervisory status based on the assignment of work. The sergeants do exercise authority in scheduling and granting time off, but the City has failed to demonstrate the officers use independent judgment when exercising this authority.

One of the sergeants in the Denison Police Department handles the scheduling within the confines of the collective bargaining agreement and the minimum staffing requirements. The chief has stated that for the 6:00 a.m. to

6:00 p.m. and the 6:00 p.m. to 6:00 a.m. shifts, at least two employees need to be on duty. The collective bargaining agreement sets the times for the shifts and also states that officers and sergeants can request a different shift twice per year. Sergeants also receive time off requests and can grant those without authorization from the chief. These requests are granted as long as the shift can be filled as required by the minimum staffing protocol.

Although the City has shown the sergeants have authority regarding the scheduling of officers, sergeants, and the assistant chief, the City has failed to show the sergeants exercise independent judgment in this responsibility. The record does not show the criteria or framework for setting the schedule or approving the requests for time off. *See City of Anamosa, 2020 ALJ 102250, 102251, at 22* (finding the sergeant created the schedule and approved time off for officers, but did not use independent judgment in preparing the schedule). The evidence available in the record indicates that scheduling is not a responsibility that requires independent judgment, but is instead a routine or clerical task.

Similarly, the City seems to imply that sergeants are supervisory because they often receive the first notification of a call for service and can assign officers to take the call. The City has failed to show that sergeants exercise independent judgment when engaging in this responsibility. Further, the record demonstrates this assignment of work is not always the responsibility of the sergeants as the dispatch may notify the sergeants of a service call first, but sometimes those notifications go to the closest officer.

The City has failed to demonstrate the sergeants exercise independent judgment when assigning work. Therefore, the City has failed to prove the sergeants are supervisors on this basis.

The City lastly claims the sergeants direct work and are therefore supervisory. The shift supervisor, which includes the sergeant and the assistant chief, work with the officers. The sergeants review the officers' reports and follow up on the status of investigations. The sergeants also conduct annual evaluations for each of the patrol officers on their shift, but the evaluations are subject to the chief's approval.

The evidence in the record indicates that sergeants act as lead workers or skilled employees providing assistance due to their expertise rather than their managerial role. The direction of work the sergeants engage in as detailed in the record are not pervasive enough to make the employee a part of management, rather than a lead worker. *See City of Davenport*, 264 N.W.2d at 320 (stating the directing and assigning of work by a skilled employee to a less skilled employee does not involve the use of independent judgment when it is incidental to the application of the skilled employee's technical or professional know-how, and thus is not evidence the employee is a supervisory employee); *see also City of Anamosa*, 2020 ALJ 102250, 102251, at 23 (finding the sergeant was not supervisory, but was a lead worker when the officers contacted the sergeant because of his experience and tenure). The sergeants' review of patrol officers' reports or follow-up on investigations as detailed in the record are not pervasive enough to align the sergeants with management. The City has failed to

demonstrate that sergeants are supervisory employees due to their direction of the patrol officers' work.

The City has failed to demonstrate the sergeants in the Denison Police Department are supervisory employees pursuant to Iowa Code section 20.4(2). As such, the bargaining unit appropriately includes the sergeants.

ORDER

The City's petition to amend the bargaining unit is granted in part and dismissed in part.

In accordance with Iowa Code section 20.13, the following group of employees of the City of Denison is determined to constitute an appropriate unit for purposes of collective bargaining pursuant to Iowa Code chapter 20:

INCLUDED: Full time and part time Police Department employees including, Probationary Officers, Patrol Officers, Sergeant, Lieutenant and Police Department Communications Operators, full time City Maintenance Department employees, assistants to City Clerk, Building Inspector.

EXCLUDED: Chief of Police, Assistant Chief of Police, Secretary to Chief of Police, Deputy Clerk, Street Commissioner, Parks and Recreation employees, temporary employees, supervisors, management officials and all others excluded by Section 4 of the Act.

This proposed decision will become PERB's final decision on the amendment of bargaining unit petition in accordance with PERB rule 621—9.1(20) 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 February, 2021.

/s/ Amber DeSmet

Administrative Law Judge