

or below, and is approved by higher authority without independent review or de novo consideration as a matter of course."¹¹

The evidence in this case clearly shows that the CSI's supervisory responsibility is substantial and persuasive enough to make the CSI classification a part of management.

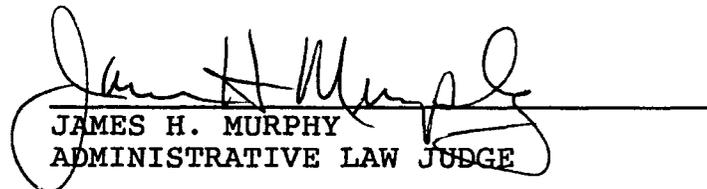
Having considered the criteria specified in Section 20.4(2) as well as the entire record, and having concluded that the classification of CSI is properly excluded from the "security bargaining unit" and based on the foregoing findings of fact and conclusions of law, I hereby issue the following recommended

ORDER

AFSCME's petition is dismissed in its entirety.

DATED at Des Moines, Iowa this 2nd day of November, 1990.

PUBLIC EMPLOYMENT RELATIONS BOARD


JAMES H. MURPHY
ADMINISTRATIVE LAW JUDGE

¹¹Davenport Community School District, 76 PERB 72.

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)

STATE OF IOWA,)
Public Employer,)

and)

AFSCME/IOWA COUNCIL 61,)
Petitioner.)

CASE NO. 3507

PUBLIC EMPLOYMENT
RELATIONS BOARD

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AFSCME/IOWA COUNCIL 61,)
Complainant,)

and)

STATE OF IOWA,)
Respondent.)

CASE NO. 3513

REISSUED DECISION ON APPEAL¹

STATEMENT OF THE CASE

This case concerns an appeal by the State of Iowa (State) of a proposed decision and order issued by an administrative law judge (ALJ) on July 3, 1989 in case numbers 3507 and 3513.

¹Following the issuance of our Decision on Appeal herein on October 17, 1989, the Public Employer/Respondent commenced a judicial review proceeding pursuant to section 17A.19, Code of Iowa (1989), alleging that certain statements contained in that Decision were erroneous. The language complained of consisted of comments concerning the analysis of the Administrative Law Judge who issued the Proposed Decision and Order herein and the arguments of the Public Employer/Respondent on appeal, and was neither essential nor necessary to our determination of the merits of the case. Although disagreement concerning the correctness of that dicta continues, the parties and the Board have agreed to the issuance of this Reissued Decision on Appeal, with the aforementioned dicta excised, as a means of informally resolving the pending judicial review proceeding. Such reissuance is not, however, to be construed as any acknowledgement by the Board or any party of the correctness of any other's position concerning the substance of the excised language. Since this Reissued Decision on Appeal supercedes and replaces the original Decision on Appeal herein, subscribers to the PERB Information Service should discard the October 17, 1989 Decision on Appeal and substitute this Reissued Decision in its place.

In this case, the American Federation of State, County, and Municipal Employees, Iowa Council 61 (AFSCME) filed a petition for amendment of bargaining unit (Case No. 3507) pursuant to section 13 of the Public Employment Relations Act (Act), ch. 20 Code of Iowa (1987). AFSCME also filed a prohibited practice complaint (Case No. 3513) against the State pursuant to section 11 of the Act. The cases were consolidated for hearing before the ALJ. In his proposed decision in Case No. 3507, the ALJ determined that the bargaining unit should be amended to specify the inclusion of the job classification of "Security Guard III". In Case No. 3513, the ALJ determined that the State violated sections 10(1) and 10(2)(e) of the Act in connection with its creation of the "Security Guard III" classification and its refusal to treat the new classification as included within the bargaining unit.

On July 14, 1989, the State appealed the determinations made by the ALJ in both Case Nos. 3507 and 3513 to the Public Employment Relations Board (PERB or Board) pursuant to section 11.2 of the Act. Oral arguments on appeal were presented to the Board on August 16, 1989 in Des Moines, Iowa by the State's representative, S. Fae Brown-Brewton, and by AFSCME's attorney, Michael E. Hansen. Both parties filed briefs on appeal by September 7, 1989.

At the hearing on appeal, AFSCME moved to cross-appeal the ALJ's decision on the ground that the ALJ failed to find an additional violation of section 20.10(2)(d) of the Act. Pursuant to PERB Rule 9.1, however, AFSCME's motion to cross-appeal was untimely, and is hereby denied.

provisions of the federal statute. We conclude that the State violated sections 10.1 and 10.2(e) of the Act by refusing to apply terms of the contract, specifically the dues deductions provisions, to Security Guard IIIs in the mistaken belief that changes in their duties and/or titles rendered them excluded from the unit.

In the present case, although AFSCME had a right, upon request, to bargain the pay grade for the new Security Guard III position unilaterally established by the State, we conclude that AFSCME waived that right. When notified of the proposed new classification, AFSCME did not request to bargain the particulars of the terms of the new classification, apparently because AFSCME was satisfied with the pay grade established by the State. The State violated sections 10.1 and 10.2(e) of the Act, however, by refusing to apply contract terms, specifically, the dues deduction provisions of the contract, to the new classification, and AFSCME promptly acted to protect its rights in this regard by filing the instant complaint.

Accordingly, based on all of the above, we conclude that the State violated sections 10.1 and 10.2(e) by its actions. In order to remedy the prohibited practices found, we issue the following:

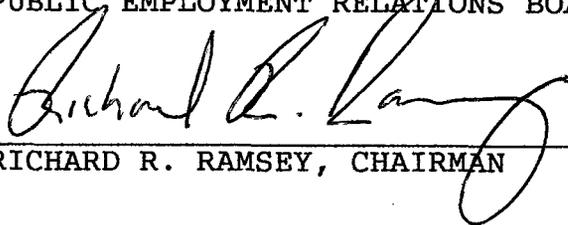
ORDER

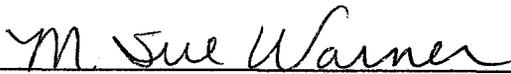
The Order of Certification of AFSCME/Iowa Council 61, and the State of Iowa security bargaining unit determined by PERB in Case No. 942 are hereby clarified and amended to specifically include the job classification of Security Guard III.

In order to remedy the prohibited practices found to have occurred, the State shall cease and desist from excluding Security Guard IIIs from coverage of the collective bargaining agreement, and shall immediately post copies of the attached Notice to Employees at the Woodward State Hospital-School, in places customarily used for the posting of notices to employees, for a period of not less than thirty (30) calendar days.

DATED at Des Moines, Iowa this 5th day of February, 1990.

PUBLIC EMPLOYMENT RELATIONS BOARD


RICHARD R. RAMSEY, CHAIRMAN


M. SUE WARNER, BOARD MEMBER

STATE OF IOWA
 BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)

STATE OF IOWA,)
 PUBLIC EMPLOYER)

AND)

AMERICAN FEDERATION OF STATE, COUNTY)
 AND MUNICIPAL EMPLOYEES, AFL-CIO,)
 COUNCIL NO. 61,)
 PETITIONER)

CASE NO. 942

AND)

STAFF EMPLOYEES COLLECTIVE ORGANIZATION,)
 INTERVENOR)

ORDER OF CERTIFICATION

NOW on this 21st day of April, 1977, the Board being advised that an election was conducted pursuant to Order of the Board, and that the American Federation of State, County & Municipal Employees, AFL-CIO, Council No. 61, an employee organization, received an affirmative vote of the majority of employees in the above-referenced case, and the Board having further found that the employee organization has fully complied with all regulations of the Act and the rules and regulations thereunder;

IT IS HEREBY ORDERED by the Board that American Federation of State, County & Municipal Employees, AFL-CIO, Council No. 61, should be, and hereby is, designated as the exclusive bargaining representative for certain employees of the State of Iowa, a public employer, in the following bargaining unit:

INCLUDED: All Security and related employees of the State of Iowa, as set forth in Appendix A hereto.

EXCLUDED: All persons holding job classifications as set forth in Appendix B hereto; managerial, supervisory, confidential, part-time and all other employees of the State of Iowa; and all other persons excluded by Section 4 of the Act.

DONE by the Public Employment Relations Board this 21st day of April, 1977.



APPENDIX A

| <u>Code No.</u> | <u>State Merit Classification</u> | <u>Department</u> |
|-----------------|--|-----------------------|
| 00480 | Grain Dealer Investigator | Commerce |
| 00482 | Warehouse Examiner | Commerce |
| 00660 | Field Safety Technician | Labor |
| 00665 | Labor Safety Educator | Labor |
| 00675 | Elevator Inspector | Labor |
| 00679 | Mines & Minerals Reclamation Officer A | Soil Conservation |
| 00680 | Surface Mine Inspector | Soil Conservation |
| 00683 | Track Car Technician A | D.O.T. |
| 00684 | Senior Track Inspector | D.O.T. |
| 00685 | Railroad Safety Investigator | D.O.T. |
| 00686 | Chief Railroad Safety Investigator | D.O.T. |
| 02405 | Health Inspector | Health |
| 02425 | Public Health Representative I | Health |
| 05101 | Weights & Measures Inspector | Agriculture |
| 05102 | Food and Sanitation Inspector | Agriculture |
| 05103 | Food Sanitation Survey Officer | Agriculture |
| 05112 | Dairy Products Inspector | Agriculture |
| 05117 | Livestock Inspector | Agriculture |
| 05126 | Meat Inspector | Agriculture |
| 05127 | Sr. Meat Inspector A | Agriculture |
| 05140 | Aplary Inspector | Agriculture |
| 05144 | Agricultural Products Inspector | Agriculture |
| 05145 | Pesticide Investigator A | Agriculture |
| 05186 | Dairy Trade Practices Investigator | Agriculture |
| 05356 | Recreational Safety Coordinator A | Conservation |
| 05424 | State Waters Aide | Conservation |
| 06075 | Training Facilities Supervisor | Law Enf. Academy |
| 06340 | Motor Vehicle Investigator | D.O.T. |
| 06360 | Motor Vehicle Officer I | D.O.T. |
| 06361 | Motor Vehicle Officer II | D.O.T. |
| 06405 | Correctional Officer I | Social Services |
| 06406 | Correctional Officer II | Social Services |
| 06407 | Correctional Escort | Social Services |
| 06409 | Correctional Officer III | Social Services |
| 06440 | Correctional Specialist | Social Services |
| 06443 | Jail Inspector | Social Services |
| 06465 | State Industries Technician I | Social Services |
| 06466 | State Industries Technician II | Social Services |
| 06470 | State Industries Supervisor | Social Services |
| 06480 | Mental Health Officer | Soc. Serv. (Woodward) |
| 06490 | Community Correctional Aide | Social Services |
| 06491 | Halfway House Worker | Social Services |
| 07105 | Guard | General |
| 06401 | Women's Corr. Officer | Social Services |
| 07110 | Security Guard I | General Services |
| 07111 | Security Guard II | General Services |
| 07112 | Military Security Guard | Adjutant General |
| 07130 | Airport Firefighter | Adjutant General |
| 08430 | Boiler Inspector | Labor |

Non-Merit Classification

Security Guard

Public Instruction

University Merit Classification

| | |
|-------|-------------------------------|
| 07581 | Hospital Security Officer I |
| 07801 | Parking Enforcement Officer |
| 07811 | Parking Enf. Officer, Chief |
| 08121 | Plant Safety Patrolman |
| 08131 | Plant Safety Sergeant |
| 08111 | Safety Inspector |
| 07491 | Security-Auxiliary Officer |
| 07551 | Security Detective |
| 07571 | Security-Lieutenant Detective |
| 07511 | Security-Patrolman |
| 07561 | Security-Sergeant Detective |
| 07501 | Security-Watchman |

APPENDIX B

| <u>Code No.</u> | <u>State Merit Classification</u> | <u>Department</u> |
|--|---|-------------------|
| 00484 | Asst. Dir. of Warehouse & Gr. Dealer Inv. | Commerce |
| 00486 | Dir., Warehouse & Grain Dealer Inv. | Commerce |
| 00676 | Elevator Inspection Supervisor | Labor |
| 02410 | Executive Secretary, Cosmetology | Health |
| 02420 | Executive Secretary, Barbering | Health |
| 02426 | Public Health Representative II | Health |
| 05220 | Parks Supervisor | Conservation |
| 05225 | Assistant Parks Superintendent | Conservation |
| 05230 | Parks Superintendent | Conservation |
| 06300 | Drivers License Examiner | D.O.T. |
| 06301 | Sr. Drivers License Examiner | D.O.T. |
| 06362 | Motor Vehicle Officer II | D.O.T. |
| 06363 | Asst. Motor Vehicle Enf. Dir. | D.O.T. |
| 06364 | Vehicle Enforcement Director | D.O.T. |
| 06365 | Asst. Motor Vehicle Invest. Director | D.O.T. |
| 06402 | Correctional Supervisor I | Social Services |
| 06410 | Correctional Supervisor II | Social Services |
| 06411 | Correctional Supervisor III | Social Services |
| 06415 | Correctional Security Asst. Dir. | Social Services |
| 06416 | Correctional Security Director | Social Services |
| 06492 | Halfway House Director | Social Services |
| 07125 | Fairgrounds Security Chief | Fair Board |
| 07131 | Airport Firefighter Supervisor | Adjutant General |
| 08435 | Boiler Inspection Supervisor | Labor |
| 05210 | Park Ranger I | Conservation |
| 05215 | Park Ranger II | Conservation |
| 05217 | Park Ranger III | Conservation |
| <u>University Merit Classification</u> | | |
| 07582 | Hospital Security Officer II | |
| 07531 | Security - Lieutenant | |
| 07521 | Security - Sergeant | |

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IOWA EMPLOYMENT RELATIONS BOARD

STATE OF IOWA

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:
 STATE OF IOWA,
 PUBLIC EMPLOYER
 AND
 ALL PETITIONERS AND INTERVENORS IN THE
 CASES NUMBERED HEREIN 1/

CASE NO. 294 2/

DECISION AND ORDER

The above-entitled matter came on for hearing before the Public Employment Relations Board on August 9, 1976, pursuant to prior order of the Board. Gene A. Vernon appeared on behalf of the State of Iowa; Alvin W. Logan and W. Patrick White appeared on behalf of the Staff Employees Collective Organization (SECO); Habbo Fokkena appeared on behalf of the Iowa State Troopers Association and Iowa Fish and Game Officers Association, Inc.; R. J. Smith appeared on behalf of the Iowa Department of Public Safety Special Agents Association; David Williams and Raymond Conley appeared on behalf of the State of Iowa Employees Association, American Federation of State, County and Municipal Employees (SIEA/AFSCME); and Charles E. Gribble appeared on behalf of the Iowa Land and Waters Conservation Officer Association.

The parties waived the formal presentation of any testimony or evidence in this matter and stipulated to the bargaining unit as set forth in the amendments to the petition in Case No. 294 (Exhibits 1 and 2).

The Board, having reviewed the stipulation of the parties and finding no objection thereto, finds that the following bargain-

1/ Also, Case Nos. 226, 282, 401, 432, and 708, which were, with the approval of the Board, withdrawn at hearing.

2/ As amended at hearing.

ing units are appropriate for purposes of collective bargaining within the meaning of Section 13(2) of the Public Employment Relations Act:

1. Public Safety Unit:

Included: Conservation officers (05355)^{3/}, and State Waters Officers (05426) of the Conservation Commission; Special Agents, Arson Investigators, Fire Prevention Specialists, Troopers, Capitol Security Guards I, and Fire Inspectors in the Department of Public Safety;

Excluded: Conservation Enforcement Supervisors (05360), Conservation Enforcement Superintendent (05365), State Waters Supervisors (05430), and State Waters Superintendent (05435) of the Conservation Commission; Sergeants, Lieutenants, Captains, Capitol Security Guards II, Capitol Security Chief, Assistant Capitol Security Chief, and Enforcement Coordinators in the Department of Public Safety; and all other managerial, supervisory, confidential, part-time and all other employees of the State of Iowa; and all other persons excluded by Section 4 of the Act.

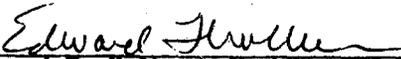
2. Security Unit:

Included: All Security and related employees of the State of Iowa as set forth in Appendix A hereto.

Excluded: All persons holding job classifications as set forth in Appendix B hereto; managerial, supervisory, confidential, part-time and all other employees of the State of Iowa; and all other persons excluded by Section 4 of the Act.

DATED at Des Moines, Iowa, this 16th day of August, 1976.

PUBLIC EMPLOYMENT RELATIONS BOARD


Edward F. Kolker, Chairman


Vernon C. Cook, Board Member


John R. Loihl, Board Member

^{3/} Numbers appearing after job classifications denote the code number assigned to that classification by the Iowa Merit Employment Department.

APPENDIX A

| <u>Code No.</u> | <u>State Merit Classifications</u> | <u>Department</u> |
|-----------------|--|-----------------------|
| 00480 | Grain Dealer Investigator | Commerce |
| 00482 | Warehouse Examiner | Commerce |
| 00660 | Field Safety Technician | Labor |
| 00665 | Labor Safety Educator | Labor |
| 00675 | Elevator Inspector | Labor |
| 00679 | Mines & Minerals Reclamation Officer A | Soil Conservation |
| 00680 | Surface Mine Inspector | Soil Conservation |
| 00683 | Track Car Technician A | D.O.T. |
| 00684 | Senior Track Inspector | D.O.T. |
| 00685 | Railroad Safety Investigator | D.O.T. |
| 00686 | Chief Railroad Safety Investigator | D.O.T. |
| 02405 | Health Inspector | Health |
| 02425 | Public Health Representative I | Health |
| 05101 | Weights & Measures Inspector | Agriculture |
| 05102 | Food and Sanitation Inspector | Agriculture |
| 05103 | Food Sanitation Survey Officer | Agriculture |
| 05112 | Dairy Products Inspector | Agriculture |
| 05117 | Livestock Inspector | Agriculture |
| 05126 | Meat Inspector | Agriculture |
| 05127 | Sr. Meat Inspector A | Agriculture |
| 05140 | Apiary Inspector | Agriculture |
| 05144 | Agricultural Products Inspector | Agriculture |
| 05145 | Pesticide Investigator A | Agriculture |
| 05186 | Dairy Trade Practices Investigator | Agriculture |
| 05356 | Recreational Safety Coordinator A | Conservation |
| 05424 | State Waters Aide | Conservation |
| 06075 | Training Facilities Supervisor | Law Enf. Academy |
| 06340 | Motor Vehicle Investigator | D.O.T. |
| 06360 | Motor Vehicle Officer I | D.O.T. |
| 06361 | Motor Vehicle Officer II | D.O.T. |
| 06405 | Correctional Officer I | Social Services |
| 06406 | Correctional Officer II | Social Services |
| 06407 | Correctional Escort | Social Services |
| 06409 | Correctional Officer III | Social Services |
| 06440 | Correctional Specialist | Social Services |
| 06443 | Jail Inspector | Social Services |
| 06465 | State Industries Technician I | Social Services |
| 06466 | State Industries Technician II | Social Services |
| 06470 | State Industries Supervisor | Social Services |
| 06480 | Mental Health Officer | Soc. Serv. (Woodward) |
| 06490 | Community Correctional Aide | Social Services |
| 06491 | Halfway House Worker | Social Services |
| 07105 | Guard | General |
| 06401 | Women's Corr. Officer | Social Services |
| 07110 | Security Guard I | General Services |
| 07111 | Security Guard II | General Services |
| 07112 | Military Security Guard | Adjutant General |
| 07130 | Airport Firefighter | Adjutant General |
| 08430 | Boiler Inspector | Labor |

Non-Merit Classification

Security Guard

Public Instruction

University Merit Classification

| | |
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| 07581 | Hospital Security Officer I |
| 07801 | Parking Enforcement Officer |
| 07811 | Parking Enf. Officer, Chief |
| 08121 | Plant Safety Patrolman |
| 08131 | Plant Safety Sergeant |
| 08111 | Safety Inspector |
| 07491 | Security-Auxiliary Officer |
| 07551 | Security Detective |
| 07571 | Security-Lieutenant Detective |
| 07511 | Security-Patrolman |
| 07561 | Security-Sergeant Detective |
| 07501 | Security-Watchman |

APPENDIX B

| <u>Code No.</u> | <u>State Merit Classification</u> | <u>Department</u> |
|-----------------|---|-------------------|
| 00484 | Asst. Dir. of Warehouse & Gr. Dealer Inv. | Commerce |
| 00486 | Dir., Warehouse & Grain Dealer Inv. | Commerce |
| 00676 | Elevator Inspection Supervisor | Labor |
| 02410 | Executive Secretary, Cosmetology | Health |
| 02420 | Executive Secretary, Barbering | Health |
| 02426 | Public Health Representative II | Health |
| 05220 | Parks Supervisor | Conservation |
| 05225 | Assistant Parks Superintendent | Conservation |
| 05230 | Parks Superintendent | Conservation |
| 06300 | Drivers License Examiner | D.O.T. |
| 06301 | Sr. Drivers License Examiner | D.O.T. |
| 06362 | Motor Vehicle Officer II | D.O.T. |
| 06363 | Asst. Motor Vehicle Enf. Dir. | D.O.T. |
| 06364 | Vehicle Enforcement Director | D.O.T. |
| 06365 | Asst. Motor Vehicle Invest. Director | D.O.T. |
| 06402 | Correctional Supervisor I | Social Services |
| 06410 | Correctional Supervisor II | Social Services |
| 06411 | Correctional Supervisor III | Social Services |
| 06415 | Correctional Security Asst. Dir. | Social Services |
| 06416 | Correctional Security Director | Social Services |
| 06492 | Halfway House Director | Social Services |
| 07125 | Fairgrounds Security Chief | Fair Board |
| 07131 | Airport Firefighter Supervisor | Adjutant General |
| 08435 | Boiler Inspection Supervisor | Labor |
| 05210 | Park Ranger I | Conservation |
| 05215 | Park Ranger II | Conservation |
| 05217 | Park Ranger III | Conservation |

University Merit Classification

| | |
|-------|------------------------------|
| 07582 | Hospital Security Officer II |
| 07531 | Security - Lieutenant |
| 07521 | Security - Sergeant |