

FRATERNAL ORDER OF POLICE)
LODGE #88,)
Petitioner,)
v.)
STATE OF NEBRASKA,)
Respondent.)
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CLERK

On September 9, 2022, the Commission issued its Findings of Fact and Order holding that the classification of Case Manager is part of the Protective Services Bargaining Unit (“PSBU”). The Nebraska Supreme Court subsequently reversed and remanded that Order on March 1, 2024, holding that the Commission erred in giving preclusive effect to its 2018 Certification Order, which placed Case Managers in the PSBU following an election. The Court directed the Commission to again rule, based on the existing record, on whether the PSBU includes Case Managers and to provide an explanation forming the basis for its ruling.

FINDINGS OF FACT

Petitioner is a labor organization representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work; it is a labor organization as that term is defined in NEB. REV. STAT. § 48-801(7). Petitioner is the exclusive collective bargaining agent for the PSBU. The PSBU is a statutorily created bargaining unit which encompasses employees of the State of Nebraska that are “institutional security personnel, including correctional officers, building security guards, and similar classes of employees.” NEB. REV. STAT. § 81-1373(1)(f). The undisputed job classifications in the PSBU include employees in the positions of Corrections Officer, Corrections Corporal, Corrections Sergeant, Corrections Unit Caseworker, Developmental Disabilities Safety and Habilitation Specialist, Mental Health Security Specialist I, Mental Health Security Specialist II, Military Security Specialist, Security Communications Specialist, Security Guard, Youth Security Specialist I, Youth Security Specialist II. Respondent is an employer as that term is defined in NEB. REV. STAT. § 81-1371(5).

Respondent alleges that there are 2 distinct positions with the title “Corrections Unit Case Manager” with different administrative labels. The employees at issue in this case are administratively classified using a “V” code—V66442—which is intended to indicate a supervisory status. Exhibit 8; Tr. 254:24–255:9. Within NDCS records, any employee who has ever occupied the position of a Corrections Unit Case Manager has been placed in the “V” classification of V66442. Exhibit 8; Tr. 257:7–20. There exists no Nebraska Department of Correctional Services record of the Case Managers ever existing with the “P” non-supervisory classification of P66442. Tr. 316:4–9. The State has not offered any evidence to explain the alleged differences in duties and responsibilities between the empty position of “P66442 Case Manager” and the “V66442 Case Manager” position that is actually used. There is no evidence that the job duties or responsibilities for this position have changed. Testimony from both current Case Managers and the Respondent’s Human Talent Director state that Case Manager duties have not substantially changed at any time relevant to this proceeding. Tr. 77:14-78:8; 125:23-126:9; 325:23-326:17. The Commission finds that Corrections Unit Case Managers, whether classified now by the Respondent as within the “P” code or “V” code is the position at issue here.

Case Managers, like PSBU Caseworkers, are shift workers. They are paid on an hourly basis, and may be regularly scheduled to work weekends. Tr. 48:6-18; 97:20-98:2; 145:23-146:4;

186: 16-25; 216:25-217:3. This stands in contrast to Corrections Unit Managers, who are a step above Case Managers in the chain of command and are included in the supervisory bargaining unit. Unlike Case Managers or Caseworkers, Unit Managers work regular 8:00 a.m. to 4:00 p.m. workdays, are salaried, and work from Monday through Friday. Tr. 47:18-20: 48:6-18. Case Managers also share working conditions with Caseworkers, Corrections Corporals, and Corrections Sergeants. All of these classes work in the housing units together and interact with inmates regularly. Tr. 45:11-46:22; 95:21-96:24; 137:14-139:16; 216:11-14. Case Managers share a community of interest with the PSBU with respect to mutuality of wages, hours, and working conditions.

With respect to duties and skills, and considering the wide range of similarities and interchangeability in job functions, Case Managers are significantly more occupationally and functionally related to PSBU Caseworkers than to Unit Managers. Case Managers and Caseworkers also share a common supervisor. Corrections Unit Managers supervise the Case Managers and Caseworkers." In addition, Unit Managers "schedule work assignments for the Unit Case Managers and Unit Caseworkers," and "train subordinates and instruct Unit Case Managers and Unit Caseworkers in proper problem-solving techniques." Exhibits 8, 9, and 10; Tr. 183: 10-21; 91:7-22; 154:16-18; 154:22-156:2.

Corrections Unit Case Managers have a history of unionization, specifically with the PSBU. They have previously been included in this unit as recently as 2018. Exhibits 1, 4 and 5. There are also two recent examples of Case Managers being included in the PSBU during bargaining with the Respondent, as evidenced by their inclusion in the 2015 and 2017 Labor Contracts between their former union, NAPE, and the State. Exhibits 4 and 5. Lynn Pozehl and Ashley Bendickson, who have been employed as Case Managers since at least 2015, testified that nothing about their duties and responsibilities have changed to make them any less appropriate for inclusion in the PSBU. Tr. 77:14-78:8; Tr.125:23-126:9. We find that the bargaining history and the extent of union organization further support a shared community of interest between the Case Managers and the PSBU.

The work of Case Managers plays an important role in ensuring the security of institutions. Every Case Manager who testified identified several core activities that make up their primary duties and responsibilities, and explained how these activities are directly tied to the safety and security of the institution. These could be summarized as custody classification, inmate scheduling.

and unit disciplinary committee. An inmate's classification determines what level of security they should be housed in, and Case Managers are responsible for determining an inmate's classification. A Case Manager at the Rehabilitation and Treatment Center ("RTC"), testified that "classification helps make sure that inmates are placed in the least-restrictive housing that they can be without jeopardizing the safety of themselves, the public, and everybody else within the institution." Tr. 221:8-12. Custody classification was described by many Case Managers as the primary component of their job. Tr. 56:17-20; 193:5-13; 221: 1-12. It is also the only activity mentioned by every Case Manager who testified. Tr. 45:1-10; 94:14-95:13; 136:16-137:13; 179:12-24; 215:14-22. One Case Manager even testified that custody classification accounts for approximately 70-75% of his job. Tr. 56:17-20. This work is directly tied to the security of the institution. Tr. 55:18-56: 16; 103:2-104:8; 193:14-194: 15; 221:1-222:2.

In addition to custody classification, Case Managers also testified that inmate scheduling was a significant part of their work. This involves managing the movement of inmates within the housing units, and requires accounting for factors such as the inmates' relationships with each other, their violence risk factors, and their restraint levels. Tr.149:3-152:19. A Case Manager at the Nebraska Correctional Center for Women testified that inmate scheduling is an important part of maintaining the security of the institution because it mitigates the chances for staff assaults, inmate assaults, and the exchange of contraband. Tr. 152:20-153:19. As with custody classifications, the purpose of inmate scheduling is to facilitate the operations of the facility in a safe and secure manner.

Case Managers also participate in Unit Disciplinary Committee, which is a tool that is used to maintain the behavior of the inmate population and keep them compliant with the rules and expectations of the institution. Tr. 45:1-10; 179:12-24; 215:14-22. This is also a component of institutional security, as it disincentivizes misbehavior and misconduct among the inmate population. In addition to these activities, Corrections Unit Case Managers are also actively involved in many of same traditional security measures as other PSBU members. Furthermore, the witnesses at trial testified that most of these activities are part of their regular duties and responsibilities, not just a matter of necessity due to staffing shortages.

Case Managers are not supervisors under NEB. REV. STAT. §48-801(14). The testimony and evidence received show that Case Managers do not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, responsibly direct, or to

adjust grievances or effectively to recommend such action regarding other employees. Despite some minimal involvement in related processes, Case Managers lack authority to use independent judgement to carry out any of the supervisory duties set out in NEB. REV. STAT. §48-801(14). Regarding the authority to lay off, transfer, recall, or adjust grievances, it is undisputed that Case Managers do not have the authority to engage in any of these activities. As for the rest of the duties, the testimony and evidence received does not support a finding that Case Managers possess any supervisory authority under the statute.

JURISDICTION

Commission Rule 12 allows a party to file a petition for clarification or amendment of a certified or recognized bargaining unit and sets forth the requirements for such a petition. The Commission promulgated this rule pursuant to its authority under NEB. REV. STAT. § 48-838(2) to determine the appropriate unit for bargaining purposes. The Commission can clarify or amend bargaining units based on the implied authority to determine questions of representation under NEB. REV. STAT. § 48-838. The Nebraska Supreme Court has directed the Commission to again rule, based on the existing record, on whether the PSBU includes Case Managers and to provide an explanation forming the basis for its ruling.

DISCUSSION

The Petitioner requests that the Commission clarify or amend the PSBU to include state employees with the job classification of “Corrections Unit Case Managers”. The party seeking modification of an existing collective bargaining unit has the burden to prove by preponderance of the evidence that it is entitled to the modification sought. *Kimball Educ. Ass’n v. Kimball Public Schools*, 14 CIR 242 (2003).

The Nebraska Supreme Court has stated that decisions under the NLRB are helpful but not controlling. See *City of Grand Island v. AFSCME*, 186 Neb. 711 (1971); *Nebraska Public Employees Local Union 251 v. Otoe County*, 257 Neb. 50 (1999). In *Marcy Delperdang v. United Electrical Radio and Machine Workers of America*, 13 CIR 400 (2001), the Commission clearly stated that NLRB standards do not apply with regard to unit clarification cases before the Commission, and that we should continue to use the “community of interest” standard which has developed in CIR case law. We follow a basic inquiry in bargaining unit determination as to whether a community of interest exists among the employees which is sufficiently strong to

warrant their inclusion in a single unit. *American Association of University Professors v. Board of Regents of the University of Nebraska*, 198 Neb. 243, 261 (1977).

In analyzing § 48-838, the Nebraska Supreme Court determined the requirements in the statute are not exclusive, and that the Commission may consider additional relevant factors when determining the appropriateness of a proposed bargaining unit. *AFSCME v. Counties of Douglas and Lancaster*, 201 Neb. 295 (1978). To determine whether a community of interest exists, we have examined several relevant factors including mutuality of interest in wages, hours and working conditions; duties and skills of employees; extent of union organization; desires of the employees; fragmentation of units; established policies of the employer; and statutory mandates to assure proper functioning and operation of governmental service. *Sheldon Station Employees Association v. Nebraska Public Power District*, 202 Neb. 391 (1979); *International Brotherhood of Electrical Workers Local 1536 v. Lincoln Electrical System*, 215 Neb. 840, 842 (1983).

The Commission finds that the job classification of Corrections Unit Case Manager is occupationally and functionally related and shares a community of interest with the undisputed members of the PSBU. NEB. REV. STAT. § 81-1373(1). We find that the work of Case Managers is that of “institutional security personnel”. We find that Petitioner has met its burden to prove that it is entitled to the modification sought. Case Managers should be included in the Protective Services Bargaining Unit. NEB. REV. STAT. § 81-1373(1)(f).

Respondent alleges that the Case Managers should not be included in the PSBU because they are supervisors. “In general, the burden of proving an exemption rests on the party claiming it. Particularly, where an employer is attempting to show that employees were supervisors, the employer has the burden of proving their supervisory status in labor proceedings.” *Hamilton County. EMS Ass’n v. Hamilton County*, 291 Neb. 495, 503 (2015).

In order to be classified as a “supervisor” under NEB. REV. STAT. § 48-801, an employee must first have the authority to engage in one of twelve enumerated activities. These include the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, responsibly direct, or to adjust “grievances or effectively to recommend such action if in connection with such action the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.” NEB. REV. STAT. § 48-801(14). The Nebraska Supreme court has stated that three questions must be answered in the affirmative for an employee to be deemed a supervisor under this statute. First, does the employee have

authority to engage in one of the twelve listed activities? Second, does the exercise of that authority require ‘the use of independent judgment? Third, does the employee hold the authority in the interest of the employer?’” *Hamilton Cnty at 530*. Additionally, under this Statute it is irrelevant whether a job classification is called a “supervisor” or “manager,” has an office, or has other job classifications subordinate to it in a chain of command or organizational chart. In other words, “the job classification in question must be sufficiently supervisory in reality and not just a supervisor on paper.” *International Ass’n of Firefighters Local 647 v. City of Grand Island*, 19 CIR 8 (2013). “[T]he statutory definition of “supervisor” must be read narrowly “to assure that exemptions from [the Act’s] coverage are not so expansively interpreted as to deny protection to workers the Act was designed to reach.” *Neligh Ass’. Group v. City of Neligh*, 13 CIR 305 (2000), citing *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 399 (1996).

The Commission found above that Case Managers lack authority to use independent judgement to carry out any of the supervisory duties set out in NEB. REV. STAT. §48-801(14). There was no credible evidence to indicate that Corrections Unit Case Managers should be considered supervisors. Respondent failed to prove that the Case Managers should be considered supervisors under the statute NEB. REV. STAT. § 48-801(14).

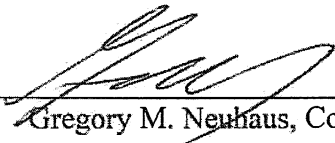
ORDER

1. The Commission amends/clarifies that the Protective Services Bargaining Unit shall include all employees with the position title of “Corrections Unit Case Managers”, whether administratively classified by the Respondent as within the “P” code or “V” code.
2. The Commission orders that the parties are to pay their own costs and fees.

All Panel Commissioners join in the entry of this Order.

Entered November 14, 2025.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS



Gregory M. Neuhaus, Commissioner