

VERMONT LABOR RELATIONS BOARD

HARTFORD CAREER FIRE FIGHTERS	)	
ASSOCIATION, LOCAL 2905,	)	
INTERNATIONAL ASSOCIATION OF	)	
FIRE FIGHTERS	)	DOCKET NO. 83-53
	)	
-and-	)	
	)	
TOWN OF HARTFORD	)	

FINDINGS OF FACT, OPINION AND ORDER

On July 12, 1983, the Hartford Career Fire Fighters Association, Local 2905, International Association of Fire Fighters ("Union") filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board. The petition requested an election among the deputy fire chief, lieutenants, fire fighter mechanic and fire fighters of the Town of Hartford Fire Department ("Employer") to determine whether the employees desired to be represented for collective bargaining by the Union.

On July 28, 1983, the Employer informed the Board that a question existed as to the supervisory status of the deputy fire chief.

A hearing was held before the full Board on September 15, 1983. Attorney John Brockway represented the Employer. T. Dustin Alward represented the Union. The issue at the hearing was whether the deputy fire chief was a supervisor, as defined in 21 VSA 1502(13), or a confidential employee as defined in 21 VSA §1722(6).

At the close of the hearing, both parties waived the submission of Requested Findings of Fact and Memoranda of Law. The Board then informed the parties orally that it had concluded the deputy fire chief was neither a confidential employee nor a supervisor. A written order to that effect was issued by the Board on September 15, 1983.

Subsequently, the Board scheduled a representation election for October 3, 1983. On September 29, 1983, the Employer filed a Motion for Relief from Judgment Order and For Stay of Election. On September 29, 1983, the Board postponed the October 3, 1983, election pending a Board ruling on the Employer's Motion for Relief from Judgment Order.

The Employer's Motion for Relief from Judgment Order has two aspects: 1) a request for a rehearing to permit the Employer to introduce new evidence not presented at the initial hearing, including exhibits and testimony of various Town of Hartford officials regarding the confidential and supervisory nature of the duties of the deputy fire chief; and 2) an assertion that the Board's Order of September 15, 1983, is not supported by specific factual findings providing the basis for the Board's conclusion that the deputy fire chief is not a confidential or supervisory employee.

Pursuant to Section 11.20 of the Board's Rules of Practice, we deny the Employer's Motion to introduce new evidence since the Employer had the opportunity to offer any relevant evidence at the September 15, 1983, hearing and the Employer's Motion does not allege any new information has come to light since the hearing which was not known at the time of the hearing.

However, the Employer's assertion that the Board's order is not supported by specific factual findings is well-taken, and pursuant to Section 11.21 of the Board's Rules of Practice , following are Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. The Town of Hartford Fire Department has 12 full-time employees: one chief, one deputy chief, four lieutenants, one fire fighter mechanic and five fire fighters.

2. Walter Morancy has been chief of the Fire Department since 1976. Richard Taylor has been deputy chief of the Fire Department since 1977. Taylor is directly responsible to Morancy.

3. The Fire Department is divided into four work groups: Groups A, B, C and D. Group A is composed of one lieutenant and two fire fighters. Group B has one lieutenant and two fire fighters. Group C has one lieutenant and one fire fighter. Group D consists of the deputy chief, one lieutenant and one fire fighter.

4. While he is working with Group D, the deputy chief drives the fire truck, performs housekeeping duties, and is responsible for fire suppression.

5. The deputy chief and the lieutenants serve as shift commanders. Both the deputy chief and the lieutenants have the authority to suspend a fire fighter for the remainder of a shift, but more serious disciplinary action may be taken only by the chief or the Town Manager.

6. The deputy chief conducts performance evaluations of employees in Group D, and the lieutenants do performance evaluations of employees in their groups. The evaluations are then submitted to the chief for his review.

7. The deputy chief serves as the director of the Town of Hartford ambulance service. The ambulance service is staffed by the Town fire department employees. Fire department employees are paid separately while working with the ambulance service if they staff the ambulance when they are off duty.

8. As ambulance service director, the deputy chief is responsible for setting up training sessions and actually training the employees in how to operate the ambulance service. He is responsible for the ambulance service payroll, which constitutes keeping track of the time the employees spend on ambulance runs and submitting the information to the Town treasurer for wage payments to the employees.

9. The deputy chief prepares the annual ambulance service budget, submits the budget to the chief, and presents it to the Town Manager and Selectmen. In preparing the budget, the deputy chief estimates the annual number of runs and calculates the pay for that number. He also estimates equipment and maintenance costs.

10. Chief Morancy reviews the budget prepared by Deputy Chief Taylor, and while he has the authority to amend the budget he has not historically done so because he has agreed with the budget submitted by Taylor.

11. The deputy chief is able to recommend increases in pay for ambulance employees, but no evidence indicates his recommendation is effective in achieving pay increases for ambulance employees.

12. Chief Morancy prepares the budget for the Fire Department. The current budget for the Department is over \$400,000.

13. The annual budget for the ambulance service is \$35,000.

14. One of the lieutenants prepares the Fire Department training budget and submits it to the chief. The maintenance mechanic presents a proposed maintenance budget to the chief. The chief reviews these proposed budgets and modifies them as he sees fit.

15. In the seven years Richard Taylor has been deputy chief, he has not suspended or dismissed any ambulance service personnel or any employee of the Fire Department and no employee has been suspended or dismissed as a result of Taylor's recommendation. In the last two years, no Fire Department employee has been suspended or dismissed.

16. Fire Department employees have submitted grievances directly to the chief in the past two years and have not first grieved to the deputy chief.

17. The deputy chief does not have the authority to hire, transfer, lay off, recall, promote or discharge employees or to effectively recommend such action.

18. Decisions as to which employees will receive merit pay raises are made exclusively by the chief. The deputy chief does not have effective authority to recommend such pay raises.

19. The chief is entitled to four weeks of vacation a year. When the chief is on vacation or ill, the deputy chief assumes the chief's duties in his absence.

20. The deputy chief is the Town Civil Defense Chairman.

#### OPINION

At issue is whether the deputy fire chief is a supervisor or a confidential employee and thus ineligible to be a member of the bargaining unit pursuant to 21 VSA §1722(12).

Confidential employee is defined in 21 VSA §1722(6) as:

an employee whose responsibility or knowledge or access to information relating to collective bargaining, personnel administration, or budgetary matters would make membership in or representation by an employee organization incompatible with his official duties.

We conclude the deputy chief does not meet this definition. The deputy chief has responsibility for personnel administration matters in that he determines the hours worked by employees on ambulance runs and relays that information to the Town treasurer for payment of wages to the employees. However, we fail to see how membership in or representation by an employee organization would be incompatible with these duties. The hours worked by individual employees is not confidential information and presumably available to all members of the bargaining unit.

The deputy chief also has responsibility for budgetary matters in that he prepares the budget for the ambulance service and submits

that budget to the Town Manager and Selectmen. However, once again, the information the deputy chief is knowledgeable of in performing these duties does not make his representation by a union incompatible with those duties. In preparing the budget, he simply estimates the annual number of ambulance runs and resultant pay and equipment and maintenance costs, information which is presumably available to all bargaining unit members. The deputy chief is able to recommend pay increases for ambulance attendants but there is no indication those recommendations are effectively followed by the Selectmen.

The Employer's second claim is that the deputy chief is a supervisor.

"Supervisor" is defined in 21 VSA §1502(13) as:

an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

It is clear by the evidence that the deputy chief does not have authority to hire, transfer, lay off, recall, promote, discharge, or reward employees. The Employer's apparent contention is that the deputy chief has supervisory authority in disciplining employees short of dismissal, assigning or directing employees, and adjusting their grievances.

In performing his duties as a shift commander and ambulance director, the deputy chief has the authority to suspend an employee for the remainder

of the shift. This authority to discipline is the same exercised by the lieutenants who are included in the bargaining unit without objection and is extremely limited. Such authority standing by itself does not make an employee a supervisor. Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, 138 Vt. 347 at 351 (1980).

The statutory test is whether or not an individual can effectively exercise the authority granted him; theoretical or paper power will not make one a supervisor. Nor do rare or infrequent supervisory acts change the status of an employee to a supervisor. Brattleboro, supra, at 351. Given this test, we cannot conclude the deputy chief's authority to discipline makes him a supervisor since the present deputy has not suspended anyone in the seven years he has been in that position nor has any employee been suspended or dismissed as a result of the deputy chief's recommendation.

We also conclude the deputy chief's authority to assign and direct employees does not make him a supervisor. There is no indication his authority as a shift commander to assign and direct is not of a merely routine nature, and in that respect he performs the same duties as the lieutenants who are included in the bargaining unit. Further, there is no indication his duties as ambulance director in assigning and directing employees require independent judgment. Given no evidence to the contrary, we presume ambulance attendants are simply following prescribed procedures learned in training when they make ambulance runs.

The next area to be examined is the deputy chief's authority to adjust grievances. That the deputy chief does not have effective



authority in this regard is indicated by the practice of the last two years of employees submitting grievances directly to the chief and not first grieving to the deputy chief.

The Employer's remaining contention is the deputy chief achieves supervisory authority by reason of taking over the duties of the chief when the chief is ill or on vacation. An employee does not acquire a supervisor's status by reason of temporarily taking over the supervisor's duties in his absence. Brattleboro, supra, at 351.

We conclude the deputy chief is not a supervisor.

#### ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. The Town of Hartford's Motion to introduce additional evidence to the Labor relations board at a hearing to be scheduled by the Board is DENIED.
2. The deputy fire chief of the Town of Hartford Fire Department is not a confidential employee as defined in 21 VSA §1722(6) or a supervisory employee as defined in 21 VSA §1502(13).
3. The bargaining unit proposed by the Hartford Career Fire Fighters Association, Local 2905, IAFF, in their petition for Election of Collective Bargaining Representative filed with the Labor Relations Board on July 12, 1983, consisting of the deputy fire chief, lieutenants, fire department mechanic and firefighters, of the Town of Hartford Fire Department is an appropriate bargaining unit and the bargaining unit shall consist of those employees.

4. An election among the employees of the above bargaining unit to determine whether the employees desire to be represented by the Hartford Career Fire Fighters Association, Local 2905, IAFF or No Union shall be conducted by the Labor Relations Board at a place, date and time to be scheduled by the Board.

Dated this 6th day of October, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kemsley, Jr.

  
James S. Gilson

This is not a final order. After the scheduled election, the Board will issue an order of certification or non-certification which will constitute the final order in this case for purposes of appeal.