

VERMONT LABOR RELATIONS BOARD

CHAUFFEURS, TEAMSTERS, WARE-	)	
HOUSEMEN AND HELPERS, LOCAL 597	)	
	)	
and	)	DOCKET NO. 86-21
	)	
BURLINGTON HOUSING AUTHORITY	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 24, 1986, the Chauffeurs, Teamsters, Warehousemen and Helpers, Local 597 ("Union") filed a Petition for Election of Collective Bargaining Representative. The petition requested an election among the maintenance employees employed by the Burlington Housing Authority. The petition was supported by signature cards signed by not less than 30 percent of the employees in the proposed bargaining unit.

In an Answer to the petition filed with the Board on April 3, 1986, the Burlington Housing Authority ("Employer") contended the maintenance foreman should be excluded from the bargaining unit as a supervisory employee.

A hearing was held before Board Chairman Kimberly B. Cheney and Member William Kemsley, Sr., on April 17, 1986. Charles Raymond, Union Secretary-Treasurer, represented the Union. Attorney James Dunn represented the Employer. At the hearing, the Union and Employer agreed the maintenance technicians and custodians employed by the Employer appropriately belonged in the bargaining unit, leaving the only question for the Board to decide as whether the maintenance foreman should be included in the bargaining unit.

The parties waived the filing of briefs.

Chairman Cheney and Member Kemsley were able to agree on the facts relevant to this matter but were unable to agree on what decision to reach based on those facts. As a result, Board Member Catherine Frank has reviewed the facts as found by Chairman Cheney and Member Kemsley and has participated in the decision.

#### FINDINGS OF FACT

1. The Burlington Housing Authority is responsible for the managing and subsidizing of low-income and elderly housing units in Burlington. The Authority is governed by a Board of Directors. The chief administrative officer is the Executive Director, Michael McNamara. Directly under him is an Assistant Director. The Authority is separated into two functional components, administration and maintenance. Administration staff work at a building on St. Paul Street. Maintenance staff work out of a building on Riverside Avenue, which is located a few miles from the St. Paul Street building. The Executive Director and the Assistant Director work at the St. Paul Street building.

2. The maintenance staff consists of a maintenance supervisor, Roman Jurkiewicz, and maintenance technicians and custodians. Maintenance technicians make electrical, plumbing and heating repairs and perform other exterior and interior building repairs and maintenance such as carpentry and painting. Custodians perform minor maintenance repairs and general custodial duties, both interior and exterior.

3. Jurkiewicz was hired as maintenance supervisor in October, 1985, at a time when tenants were dissatisfied with the delivery of maintenance services and had asked for the resignation of the previous

maintenance supervisor. When considering whom to select as the new maintenance supervisor, Authority management sought an individual demonstrating initiative and strong leadership skills.

4. The maintenance supervisor is primarily responsible for the assignment of work to maintenance technicians and custodians. Tenants call maintenance requests into the administration office. Administration staff send the work orders to the maintenance supervisor. The maintenance supervisor then decides who will do the work, assigns the work to that individual and then inspects work to ensure it is done properly. The maintenance supervisor meets with four of the six maintenance employees every morning to assign work. Generally, the maintenance supervisor establishes which work orders will be given priority. Occasionally, maintenance requests will come into the administration office which the Executive Director determines need immediate action and he will contact the maintenance supervisor to tell him to have the work done on a priority basis. Such a situation is the exception, rather than the rule.

5. All maintenance staff, including the maintenance supervisor, work 8:00 a.m. to 4:30 p.m., Monday through Friday. During non-work hours, one maintenance employee is always on call to handle maintenance requests. If the request is an emergency, the employee will respond immediately. If not, the problem may be held over until the next day. If the employee on call is unclear whether to respond immediately or wait, or if responding to the request is going to result in a large expenditure, the employee calls the maintenance supervisor for direction.

6. If a vacancy occurs in an apartment, the maintenance supervisor decides what maintenance and repair work has to be done to make the

dwelling habitable and then assigns employees to do the work. The maintenance supervisor then inspects the work after it is completed.

7. \$60,000 is budgeted annually for maintenance supplies and materials. Within that budget, the maintenance supervisor determines which purchases to make.

8. Since Jurkiewicz was hired as maintenance supervisor, there has been only one incident in which maintenance employees were disciplined. On the night of October 30, 1985, maintenance employees were on duty at housing projects to guard against any vandalism due to the so-called "cabbage night" celebration occurring that night. Two of the employees took a truck assigned to the other employee, without the employee's knowledge, and moved it around a corner approximately 500 ft. from where they found it. Jurkiewicz made a report of the incident and recommended to McNamara that the employees be reprimanded. Subsequently, McNamara docked the pay of the employees one hour (Employer Exhibit 1).

9. The maintenance supervisor does not have the authority to take a specific disciplinary action against employees or effectively recommend taking a specific disciplinary action. He has the authority to recommend that some action be taken, but does not recommend specific action.

10. The maintenance supervisor twice yearly conducts a performance evaluation of the maintenance employees in which he gives employees ratings in key performance areas. The performance evaluations are used by McNamara to discuss areas needing improvement with the rated employees.

11. The maintenance supervisor does not have the authority to hire, transfer, lay off, recall, promote or reward employees, or effectively to recommend such action.

12. The majority of the maintenance supervisor's time is spent performing the same duties as the maintenance technicians - duties such as carpentry, plumbing, mechanical and electrical work. Approximately one-third of the maintenance supervisor's time is spent performing supervisory duties.

13. The maintenance supervisor's base pay is 37 percent greater than maintenance technicians and 60 percent greater than custodians.

#### MAJORITY OPINION

The issue before us is whether the maintenance supervisor is a supervisor and, thus, ineligible to belong to a bargaining unit pursuant to 21 VSA §1722(12)(b).

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

An individual having authority in the interest of the employer to hire, transfer, suspend, layoff, 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.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment". Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980).

It is clear by the evidence the maintenance supervisor does not have authority to hire, transfer, lay off, recall, promote, or reward employees, or to effectively recommend such action. Further, no evidence indicates the maintenance supervisor has the authority to adjust employee grievances.

The Employer contends the maintenance supervisor has disciplinary authority since he has played a key role in disciplining employees. We do not believe his authority in this regard rises to the level contemplated in statute to constitute supervisory authority. The evidence indicates he does not have authority to actually impose discipline; that authority lies with the Executive Director.

We also believe he does not have authority to effectively recommend the disciplining of employees. In the one instance where he recommended the disciplining of employees, he did not recommend a specific disciplinary action but simply recommended two employees be "reprimanded". In essence, he has the authority to recommend some disciplinary action be taken but does not recommend specific action. Ability to make such a general recommendation does not constitute effective disciplinary authority within the meaning of the statute. That authority lies solely with the Executive Director.

Nonetheless, the Employer contends the maintenance supervisor has the authority to assign employees and responsibly direct them, and that such authority requires the use of independent judgment.

We disagree. While the maintenance supervisor is responsible for the assignment of work to maintenance technicians and custodians, it is evident such authority is of a routine nature. Work assigned

by the maintenance supervisor normally is done pursuant to work orders, not at the maintenance supervisor's initiative. While he decides which employee will do which work order and may prioritize the orders, it is apparent this is more in the nature of assigning work pursuant to standard operating procedures than exercising independent judgment.

He may exercise somewhat more initiative in cases of apartment vacancies, when he decides what maintenance and repair work has to be done to make a dwelling habitable, or when on-call employees look to him for direction when a large expenditure is at issue or when it is unclear whether work should be done immediately. However, we are unconvinced his authority in this regard requires him to go beyond simply relating to other employees the standard practices of the Authority.

This is not a situation where the maintenance supervisor regularly provides direction to employees as to how to perform their duties. Each employee has to decide within certain limits which tools and materials are necessary to do the job and which procedure would be best to get the job done. The maintenance supervisor himself spends the majority of time performing the same duties as the maintenance technicians. In our view, he serves as a lead worker normally performing the same duties as other employees and, if difficulties arise, relates to other employees the standard operating procedures. While this means he directs employees to some extent, such direction does not rise to the level to constitute exercise of supervisory authority. IBEW, Local 300 v. Village of Enosburg Falls, 4 VLRB 370, 376 (1981).

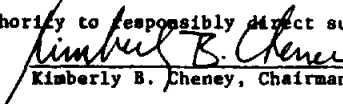
In a related case, Precision Fabrication, Inc. v. NLRB, 204 F2d 567 (2nd Cir., 1953); cited with approval by the Vermont Supreme Court in Firefighters v. Brattleboro Fire Department, 138 Vt. 347, 352, the National Labor Relations Board adjudicated as nonsupervisory a worker who spent 20 percent of his time assigning work to others based on prepared production lists and management orders. Similarly here, the maintenance supervisor spends a minority of his time assigning work to others based on standard operating procedures. This is more in the nature of exercising routine authority than using independent judgment.

  
William G. Kemsley, Sr.

  
Catherine L. Frank

DISSENT

I dissent from my colleagues' views that the maintenance supervisor is not a supervisory employee within the meaning of the statute. In my view, he meets the definition of supervisor within the meaning of 21 VSA §1502(13) because he has the authority to responsibly direct subordinates.

  
Kimberly B. Cheney, Chairman



ORDER

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

1. The maintenance supervisor employed by the Burlington Housing Authority is not a supervisor within the meaning of 21 VSA §1502(13), and is thus included in the bargaining unit of Authority maintenance employees; and

2. A secret ballot election shall be conducted by this Board pursuant to 21 VSA §1724(e) at such time, date and place as the Board shall order to determine whether the maintenance employees, including the maintenance supervisor, employed by the Burlington Housing Authority desire to be represented for exclusive bargaining purposes by the Chauffeurs, Teamsters, Warehousemen and Helpers, Local 597, or no union.

Dated this 11<sup>th</sup> day of June, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
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William G. Kemsley, Sr.

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Catherine L. Frank