

VERMONT LABOR RELATIONS BOARD

CITY OF WINOOSKI)	
)	
and)	DOCKET NO. 86-9
)	
WINOOSKI POLICE EMPLOYEES')	
ASSOCIATION)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 24, 1986, the City of Winooski ("City") filed a petition with the Vermont Labor Relations Board, requesting the Board to determine whether the Sergeants of the Winooski Police Department were eligible to be in the bargaining unit represented by the Winooski Police Employees' Association ("Association") or whether they were supervisory employees not entitled to membership in such unit. It is uncontroverted the Sergeants desire to be represented by the Association.

A hearing was held before Board Chairman Kimberly B. Cheney and Board Member James S. Gilson on March 6, 1986, at the Board hearing room in Montpelier, Vermont. Member William G. Kemsley, Sr., was not present at the hearing and has not participated in the decision. Attorney John Cain represented the Association and the City was represented by City Attorney William Wargo.

Requested Findings of Fact and Memoranda of law were filed by the Association and City on March 25 and 26, 1986, respectively.

FINDINGS OF FACT

1. The Winooski Police Department has 12 police officer positions. The Department is headed by a Chief, Armand Vallee. Directly under the Chief is a Lieutenant, Gerald Cowhig. Under them are the detective bureau, which contains a detective sergeant and a detective, and the uniform patrol division, which contains two uniform sergeants and six patrolmen (Exhibit A).

2. The Police Department has a Police Manual which was revised in 1985. The Manual is extensive and is designed to cover every situation which an officer may encounter in the line of duty. Most law enforcement situations which arise are covered by the Police Manual. It is the obligation of each officer to be thoroughly familiar with the contents of the manual.

3. The detective bureau, which is separate and distinct from the uniform patrol division, consists of Detective Sergeant Michael Spaulding and Detective Barry Lawrence. Lawrence is the only employee under Spaulding's command. Spaulding generally has no authority over other officers.

4. Sergeant Spaulding does not assign casework to Detective Lawrence. Instead, cases requiring detective work are randomly distributed as they come in. Spaulding does not supervise Lawrence's efforts on a case, although he may help Lawrence, and Lawrence may assist him, on complex cases.

5. Sergeant Spaulding ensures Detective Lawrence complies with Department rules and regulations as contained in the Police Manual. If Lawrence commits a violation of rules and regulations, Spaulding can

Speak to Lawrence about the violation but has no authority to impose any disciplinary action. Instead, the detective sergeant must report the infraction to the Lieutenant or Chief to decide if any action should be taken.

6. If Lawrence reports to work somehow impaired, Spaulding has the discretion to send him home for the remainder of the shift with pay. If Spaulding sent an employee home, he would notify the Chief immediately and the Chief would decide if any further action should be taken.

7. Detective Sergeant Spaulding has no authority to initiate disciplinary proceedings against an officer, although at times he has conducted disciplinary investigations at the request of the Chief. In conducting such investigations, Spaulding follows guidelines in the Police Manual. At the conclusion of the investigation, Spaulding writes a report containing information related to him. In one case which he investigated, Spaulding recommended the officer be disciplined. The Chief did not follow that recommendation.

8. Sergeant Spaulding generally works 8:00 a.m. to 4:00 p.m., the same hours as the Chief and Lieutenant. In the absence of the Chief and Lieutenant, he has been the officer in charge 10 to 15 times during the past five years.

9. When the detective sergeant arrives at a crime scene, he is in charge of preserving the scene and gathering evidence. In the course of his duties, the detective sergeant may request assistance from the other officers but does not supervise their activities. In practice, detectives and patrol officers work cooperatively at the crime scene.

10. There are two sergeants in the uniform patrol division, Steve McQueen and Robert Walker. At present, McQueen has two patrol officers assigned to him (the third position is vacant) and Walker has three patrol officers assigned to him. Officers are assigned to sergeants mainly for administrative purposes such as facilitating field reports and approving overtime and vacation requests. These duties by the sergeant are routine and do not require the use of independent judgment.

11. The uniform sergeants generally work evenings, from 6:00 p.m. to 4:00 a.m. McQueen and Walker alternate working these shifts. When a uniform sergeant is on duty, he generally is the officer in charge of the shift, since the Chief and Lieutenant are not on duty. Generally, there is one patrol officer on duty with the sergeants, although at times there are no other officers or two other officers on duty.

12. The uniform sergeants relay the Chief's and Lieutenant's instructions to the patrol officers and ensure the officers adhere to the rules and regulations which are set forth in the Police Manual. If an officer commits a minor violation of the rules, the sergeant discusses the violation verbally with the officer. If a major violation occurs, the sergeant writes a report on the incident and submits it to the Lieutenant.

13. The uniform sergeant has no authority to discipline an officer. He can send an officer home for the remainder of a shift with pay.

14. If a situation requiring independent judgment arises which is not covered in the Police Manual, the sergeant discusses it with the Lieutenant for guidance as to what action to take.

15. Uniform sergeants do not assign work as calls come in. Dispatchers assign such work and generally contact the officer who is available at the moment.

16. Between the hours of 4:00 a.m. and 8:00 a.m., there is only a patrol officer on duty. No uniform sergeants are on duty although they are on call to answer questions which may arise.

17. Sergeant McQueen was actively involved in the 1985 revision of the Police Manual under the direction of Chief Vallee. Chief Vallee asked him to put together a rough draft of the manual, which he did. The final draft was approved by the Chief.

18. The rules and regulations in the Police Manual provide there will be an "officer in charge" at all times. The officer in charge is the highest ranking officer on duty. If all of the officers on duty are the same rank, then the officer with the most seniority is officer in charge. All the officers, including the patrol officers, have served as officers in charge.

19. The job of the officer in charge is to ensure Department rules and regulations are complied with. A patrol officer who is officer in charge has the same authority as a sergeant who is officer in charge. If a situation arises which is not covered by the Police Manual, the officer must discuss the situation with the Lieutenant or Chief for guidance. The officer in charge has the limited authority to send an officer home for the remainder of the shift if the officer is unfit for duty. This action must be immediately reported to the Chief.

OPINION

The issue before us is whether the three sergeants of the Winooski Police Department are supervisors 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 none of the sergeants have authority to hire, transfer, lay off, recall, promote, discharge, assign, or reward employees, or to adjust their grievances, or to effectively recommend such action. It is also evident the sergeants lack authority to discipline employees. Any disciplinary authority is extremely limited in that it consists of sending an employee home for the remainder of the shift. Such authority standing by itself does not make an employee a supervisor. Brattleboro, supra, at 351. IAFF and Town of Hartford Fire Department, ___ Vt. ___ (November 27, 1985).

The City contends the sergeants are supervisors because they responsibly direct other employees. We first consider whether the detective sergeant has this supervisory authority.

Since the detective bureau is separate and distinct from the uniform patrol division, the detective sergeant has no authority over officers in the uniform patrol division. The detective sergeant may be the officer in charge at times in the absence of the Chief and Lieutenant, which technically puts him in charge of patrol officers. As discussed later, we do not believe serving as officers in charge convert sergeants into supervisors. Regardless, with respect to the detective sergeant, we need only go so far as to mention he serves as officer in charge very infrequently, and rare or infrequent supervisory acts do not change the status of an employee to a supervisor. Brattleboro, supra, at 351. Also, the detective sergeant may interact with patrol officers at a crime scene. However, he does not supervise their activities there. In practice, detectives and patrol officers work cooperatively at the crime scene.

The detective sergeant thus only has one employee under his command, the detective assigned to the detective bureau. Whether the sergeant's authority over the detective rises to the level of responsibly directing him we need not address since, in any event, authority over one employee does not meet the statutory definition. The statutory language is in the plural, requiring supervisory authority over employees for an individual to be considered a supervisor. c.f., Health Department Personnel Designation Disputes, 5 VLRB 245, 247 (1982).

We next consider whether the uniform sergeants responsibly direct other employees. The City contends the uniform sergeants have supervisory authority in this regard because they responsibly direct the implementation of Department policy and directly determine that policy.

We conclude the uniform sergeants do not responsibly direct employees in the implementation of Department policy, within the meaning of the statutory definition, because their exercise of such authority does not require the use of independent judgment.

The Department is governed by an extensive Police Manual which is designed to cover every situation which an officer may encounter in the line of duty and which, in fact, covers most law enforcement situations which do arise. The uniform sergeants ensure patrol officers adhere to the rules set forth in the manual, but in doing so are simply relating standard operating procedures of the Department. Such direction lacks use of independent judgment and does not rise to the level of constituting exercise of supervisory authority. Brattleboro, supra, at 352. IBEW, Local 300 v. Village of Enosburg Falls, 4 VLRB 370, 376 (1981). The uniform sergeants' lack of independent judgment in directing employees is indicated by the sergeants discussing a situation which is not covered by the Police Manual with the Lieutenant for guidance as to what action to take.

The fact uniform sergeants may be the "officer in charge" during a shift does not make them supervisors. It is evident the Department is structured in such a way that effective supervisory authority lies only with the Chief and Lieutenant. The sergeants' use of discretion as officers in charge is extremely limited.

The evidence also indicates the uniform sergeants relay instructions and assignments from the Chief and Lieutenant to the patrol officers. The assignment of routine duties, pursuant to directives and established procedures, does not make one a supervisor. Brattleboro, supra, at 352.

Nonetheless, the City contends the sergeants' role in directly determining Department policy indicates they are supervisors, since a supervisor can be someone who responsibly directs through longterm policy preparation as well as by independently and immediately directing.

The City points to Sergeant McQueen's role in fashioning the Police Manual to indicate this policy determination authority of the sergeants. We conclude McQueen's role in this regard did not rise to the level of determining Department policy or making policy decisions. True, he had a key role in drafting the contents of the manual when it was revised in 1985. However, final approval of the revisions lay solely with the Chief. Policy decisions rested with him, not McQueen. Moreover, this was a one-time project and rare or infrequent supervisory acts do not make one a supervisor. Brattleboro, supra, at 351.

ORDER

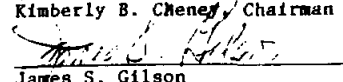
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

The three sergeants employed by the Winooski Police Department are not supervisory employees as defined in 21 VSA §1502(13) and shall be included within the bargaining unit of Winooski Police Department employees represented by the Winooski Police Employees' Association.

Dated this 6th day of April, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman


James S. Gilson