

VERMONT LABOR RELATIONS BOARD

LOCAL 1343, AMERICAN FEDERATION )  
OF STATE, COUNTY AND MUNICIPAL )  
EMPLOYEES, AFL-CIO )  
and )  
CITY OF ST. ALBANS FIRE )  
DEPARTMENT )

DOCKET NO. 87-10

FINDINGS OF FACT, OPINION AND ORDER

On February 3, 1987, Local 1343, American Federation of State, County and Municipal Employees, AFL-CIO ("Union") filed a Petition for Election of Collective Bargaining Representative. The petition requested that the two Lieutenants of the City of St. Albans Fire Department be added to the bargaining unit of firefighters of the Department represented by the Union. The two Lieutenants, Joseph Beaudry and Leslie Langlois, submitted the petition.

On February 9, 1987, the City of St. Albans ("Employer") filed a response to the petition, contending that the Lieutenants were supervisors and confidential employees and, thus, ineligible to be included in the bargaining unit.

A hearing was held on March 18, 1987, in the Labor Relations Board hearing room in Montpelier, before Board Members Charles McHugh, Chairman; Louis Toepfer and Dinah Yessne. Attorney Robert Farrar represented the Employer. Lindol Atkins, Union President, represented the Union. Both parties waived the submission of briefs.

#### FINDINGS OF FACT

1. The St. Albans Fire Department is comprised of 15 full-time positions: a Chief, a Captain, two Lieutenants, 10 permanent firefighters and one probationary firefighter.

2. The Chief heads the Department and reports to the City Manager. The Captain and the Lieutenants report directly to the Chief.

3. In the absence of the Chief, the Captain takes over the duties of the Chief. Occasionally, both the Chief and the Captain are absent. In that situation, a Lieutenant takes over the duties of the Chief.

4. The present Lieutenants are Leslie Langlois and Joseph Beaudry. They became Lieutenants on the basis of seniority alone. No special qualifications or training were required.

5. The St. Albans Fire Department operates under a 24 hour per shift rotation system. The Captain and each of the Lieutenants are shift commanders. Shift commanders are in charge during their tour of duty.

6. At the Fire Department station, firefighters perform general maintenance and cleaning duties. Firefighters either perform these duties as a matter of routine or are assigned duties by the shift commander. The assignment of such duties is of a routine nature and does not require independent judgment.

7. Any new departmental rules, regulations or procedures are initiated by the Chief. On at least one occasion, Lieutenant Beaudry has put a new rule into effect on his shift. However, the firefighters' compliance with this rule was voluntary.

8. In the absence of the Chief and Captain, the Lieutenant on duty has full authority in responding to a fire call. In the absence of persons of a higher rank, the most senior firefighter present has full authority in responding to a fire call. Firefighters have performed this responsibility.

9. At a fire, the most senior person present is in charge of assigning tasks. In the absence of the Chief and Captain, Lieutenants have served as persons in charge. In the absence of persons of higher rank, firefighters have served as persons in charge. In practice, members of the Department generally know what duties they are to perform at a fire.

10. Lieutenants had no special training to be Lieutenants but underwent the same training as full-time firefighters.

11. Lieutenants do not have authority to hire, transfer, lay off, recall, promote, discharge, reward or adjust grievances of employees, or to effectively recommend such action.

12. On several occasions, Lieutenant Beaudry has gone to the Chief to request that a firefighter on his shift be transferred to another shift. His request has consistently been refused.

13. Lieutenants do not have authority to discipline employees. They may recommend that disciplinary action be taken against firefighters. On one occasion, Lieutenant Beaudry recommended that a firefighter on his shift be disciplined. This request resulted in both Beaudry and the firefighter being admonished by the Chief. On one occasion, Lieutenant Langlois recommended to the Chief that a firefighter on his shift be disciplined. This recommendation resulted

in the firefighter receiving a verbal reprimand. No employees have been suspended or dismissed subsequent to such recommendation by a Lieutenant.

14. The Chief has asked firefighters as well as Lieutenants to evaluate the performance of probationary firefighters.

15. Lieutenants and firefighters alike are authorized to leave the station house to perform inspections and investigate complaints.

#### OPINION

The central issue is whether the Lieutenants are supervisors and thus ineligible to be members of the bargaining unit pursuant to 21 VSA §1722(12).

"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.

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).

The basic contention of the Employer is that the Lieutenants have supervisory authority in assigning or directing employees and effectively recommending disciplinary action.

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 Lieutenants have effective authority to recommend disciplinary action. The evidence does not indicate any employees have been disciplined subsequent to such a recommendation by the Lieutenants. In fact, the evidence is to the contrary. Such recommendations have been made by the Lieutenants and not acted upon in kind by the Chief.

We also conclude the authority of the Lieutenants to assign and direct employees does not make them supervisors. Such duties performed at the fire station are of a routine nature and do not require the use of independent judgment. Further, we are not convinced that the assigning and directing of employees by Lieutenants when in charge at a fire results in supervisory status since, in practice, members of the Department generally know what duties they are supposed to perform at a fire and firefighters, who are indisputably non-supervisory employees, have served as persons in charge at a fire.

Similarly, the function of evaluating the performance of probationary firefighters does not result in supervisory status since permanent firefighters have performed the same function.

Finally, the Lieutenants do not achieve supervisory authority by taking over the duties of the Chief when the Chief is absent. An employee does not acquire a supervisor's status by temporarily taking over the supervisor's duties in his or her absence. Brattleboro, supra, at 351.

In its answer to the petition, the City contended the Lieutenants were confidential employees. 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.

No evidence was presented to indicate that the Lieutenants have responsibility or knowledge or access to such information which would make representation by the Union incompatible with their duties.

Thus, the Lieutenants are neither supervisory nor confidential employees and thus are eligible to be part of the bargaining unit represented by the Union. We do not believe it necessary to hold an election to determine whether the Lieutenants will be added to the bargaining unit and represented by the Union. Pursuant to 21 VSA§1722(3) and §1724(c), the Board is empowered to determine the appropriateness of a bargaining unit without the approval of the involved employees. Further, no question of representation exists requiring a representation election. The Lieutenants have indicated that they wish to be represented by the Union.

#### ORDER

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

1. The Lieutenants of the St. Albans Fire Department are neither confidential employees as defined in 21 VSA §1722(6) nor supervisory employees as defined in 21 VSA §1502(13); and

2. The Lieutenants shall be included in the City of St. Albans Fire Department bargaining unit represented by Local 1343, American Federation of State, County and Municipal Employees, AFL-CIO ("Union") and the Union is CERTIFIED

as the exclusive bargaining representative of the  
Lieutenants.

Dated this 30th day of April, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh  
Charles H. McHugh, Chairman

Louis A. Toepfer  
Louis A. Toepfer

Dinah Yessne  
Dinah Yessne