

VERMONT LABOR RELATIONS BOARD

SOUTH BURLINGTON POLICE	)	
OFFICERS' ASSOCIATION	)	
	)	
and	)	DOCKET NO. 88-2
	)	
CITY OF SOUTH BURLINGTON	)	

MEMORANDUM AND ORDER

On March 24, 1988, the South Burlington Police Officers' Association ("Association") filed a Petition for Election of Collective Bargaining Representative, seeking to add the sergeants, lieutenants, dispatchers and civilian employees employed by the South Burlington Police Department to a bargaining unit of patrolmen and detectives currently represented by the Association. On July 5, 1988, the City of South Burlington ("Employer") filed a Motion to Dismiss Petition for Election of Collective Bargaining Representative. On July 22, 1988, the Labor Relations Board issued a Memorandum and Order denying the Motion. 11 VLRB 220.

A hearing was held on August 25, 1988, before Board members Dinah Yessne, Acting Chair; William Kemsley, Sr., and Louis Toepfer. The Association was represented by Attorney Christopher Davis. Attorney Joseph McNeil represented the Employer. At the hearing, the parties agreed to the inclusion of the dispatchers and the record secretary of the Police Department in the bargaining unit. The parties further agreed that the secretary to the Police Chief was excluded from the bargaining unit as a confidential employee and that the sergeant in

the Bureau of Criminal Investigation Unit was excluded as a supervisory employee. As a result, the only remaining dispute was whether the sergeants and lieutenants of the Police Department should be included in the bargaining unit. The Employer contends that the sergeants and lieutenants should be excluded as supervisory employees.

The Association filed a Memorandum of Law on September 8, 1988. The Employer filed a Memorandum on September 12, 1988.

#### FINDINGS OF FACT

1. The South Burlington Police Department generally includes a chief, captain, three lieutenants, three patrol sergeants, a Bureau of Criminal Investigation sergeant, a sergeant who is the juvenile and community relations officer, and 19 patrol officers of whom some are corporals and detectives.

2. The South Burlington Police Department is the second most active police department in Chittenden County, and is the third or fourth most active police department in Vermont. It is likely at any given time that there will be multiple, simultaneous events occurring requiring police response.

3. There are three patrol shifts a day in the Department. Each shift is eight and one-half hours long. The patrol officers, patrol sergeants and lieutenants work a schedule which provides that they are on duty four days, then off duty two days. During four of the six shifts in a six-day period, either a sergeant or lieutenant, but not both, are scheduled to be on duty. On two of the six shifts, both a sergeant and lieutenant are scheduled to be on duty. When this is the case, the lieutenant has general command and the sergeant generally

has field command. Sergeants serve as shift commanders in the absence of a lieutenant. In addition to a sergeant and/or lieutenant, generally there are three patrol officers and one dispatcher scheduled to work a particular shift. On rare occasions, probably no more than six times a year, a patrol officer will act as a shift commander because no sergeant or lieutenant is on duty.

4. The patrol of the City of South Burlington is divided into three zones. The shift commander assigns patrol officers to the various zones. A patrol sergeant may be assigned to a zone if a lieutenant is on duty. Otherwise, patrol sergeants and lieutenants do not patrol zones. In assigning officers to various zones, shift commanders have discretion in determining where officers will be assigned. Generally officers are rotated among patrol areas but there are no set procedures on assigning officers. The shift commander will make patrol officers aware of any particular problems that are occurring in their assigned area.

5. The Police Department has an operation manual which establishes policies and procedures to follow for incidents which may arise during a particular shift. Each officer is expected to know the various policies and procedures. If patrol officers have questions concerning policies and procedures, the shift commander ensures that the officers take action consistent with the operations manual. There are issues which arise which are not covered by the operations manual. For instance, if an accident occurs, a shift commander may have to independently determine whether backup assistance should be provided. Also, patrol sergeants and lieutenants may have to make independent judgments as to determining how search and seizure situations will be

executed or the continuation or discontinuation of high speed pursuits, and direct patrol officers to act accordingly.

6. Patrol sergeants and lieutenants review the reports of patrol officers, and direct the officers to correct reports if they are not adequate.

7. Patrol sergeants and lieutenants have the authority to call employees in to work if there is a shortage of officers on their shift. They will first seek volunteers, but if no volunteers are available (which occurs approximately one-half of the time) patrol sergeants and lieutenants have the authority to order an officer to come into work. There are no written policies to govern calling in of employees and shift commanders employ different procedures.

8. If patrol officers want time off, requests are made to the shift commander, who makes an initial determination whether the leave should be granted. The shift commander then forwards the request to the captain and chief. In almost all instances, the shift commander's determination is followed.

9. Patrol sergeants and lieutenants generally operate their shifts with only very infrequent involvement of the captain or chief in operational decisions.

10. The present police chief, John Race, has been chief for 18 months. During that time, he has been called out of his home twice to respond to incidents occurring while he was not working.

11. The duties of patrol sergeants and lieutenants differ very little, with the exception that a sergeant may take a patrol area and be under the command of a lieutenant if a lieutenant is on duty.

12. Patrol sergeants and lieutenants have no authority to discipline patrol officers. Disciplinary action is taken by the city manager upon the recommendation of the police chief. If a patrol officer commits an infraction on a shift, the patrol sergeant or lieutenant writes a report of the incident and forwards it to the captain and chief for action. In writing such reports, sergeants and lieutenants do not recommend disciplinary action. Although there have been a few exceptions, patrol sergeants and lieutenants generally are not asked to make recommendations concerning the discipline, if any, to be imposed. Patrol sergeants and lieutenants do have the authority to relieve a patrol officer from duty for the remainder of the shift if the officer is impaired due to alcohol or drug abuse.

13. Patrol sergeants and lieutenants are expected to report exemplary actions of patrol officers to the captain or chief. Specific recommendations as to the nature or extent of the commendation or reward to be granted are not made by the patrol sergeants and lieutenants.

14. Patrol sergeants and lieutenants do not have the authority to hire officers. From time to time, sergeants and lieutenants have participated in interviewing employment candidates, and then come up with a rating score for each candidate. The captain and chief ultimately decide whom to hire. On at least one occasion, a patrol officer also participated on such a board. At times, the recommendations of sergeants and lieutenants to hire or not hire particular candidates have been followed, as have similar recommendations from patrol officers.

15. Sergeants and lieutenants are not involved in the grievance procedure and have no authority with respect to formal grievances. Monthly staff meetings occur at the Police Department. The chief, captain, lieutenants and sergeants are present at these meetings. They seek to resolve employee complaints or problems that have arisen. Personnel issues involving patrol officers have been discussed at these meetings.

16. Patrol sergeants and lieutenants do not have the authority to transfer or lay off employees, or to effectively recommend such action.

17. The sergeant who is the juvenile and community relations officer directly commands one officer working under him. This sergeant establishes the officer's schedule, assigns him projects and monitors his performance to ensure work is properly completed. This sergeant reports directly to the captain. This sergeant is not specially hired but is assigned from the pool of sergeants.

18. Sergeants receive a higher rate of pay than the patrol officers. Lieutenants receive a higher rate of pay than the sergeants.

19. Sergeants and lieutenants participate in police supervisory training courses held at the Vermont Police Academy and other places.

#### MAJORITY OPINION

At issue is whether the sergeants and lieutenants of the South Burlington 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). The statutory test is whether or not an individual can effectively exercise the authority granted him or her; 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.

We first discuss the sergeant who serves as the juvenile and community relations officer. This sergeant has only one employee under his supervision. Thus, he is not a supervisor since authority over one employee does not meet the statutory definition of supervisor. The statutory language is in the plural, requiring supervisory authority over employees for an individual to be considered a supervisor. City of Winooski and Winooski Police Employees Association, 9 VLRB 85, 91 (1986).

We discuss the sergeants and lieutenants who work in the patrol component of the police department together because their duties

differ very little. It is clear from the evidence that they do not have the authority to transfer, lay off, promote, or adjust grievances of employees, or to effectively recommend such action.

We also conclude that patrol sergeants and lieutenants lack supervisory authority with respect to hiring employees. While they may participate as members of a board which interviews employment candidates, it is apparent that any effective authority in hiring decisions lies with the chief and captain.

Further, patrol sergeants and lieutenants do not have supervisory authority with respect to rewarding employees or discharging, suspending or otherwise disciplining them. While the sergeants and lieutenants report conduct of employees which may ultimately result in the discipline or rewarding of employees, they have no effective authority to either determine or effectively recommend what, if any, discipline will be imposed or reward will be granted. They do not make specific recommendations as to appropriate sanctions or rewards. Any disciplinary authority is limited to sending an employee home for the remainder of the shift. Such limited authority, standing by itself, does not make an employee a supervisor. Brattleboro, supra, at 351.

However, the evidence leads us to conclude that the patrol sergeants and lieutenants have the authority to assign and responsibly direct the patrol officers working on their shifts, and that such authority requires the use of independent judgment.

It is evident that the chief has delegated authority to the patrol sergeants and lieutenants to a sufficient degree so that, when considering their duties as a whole, the sergeants and lieutenants are



in charge of each shift and exercise independent judgment in directing the shift. They generally operate their shifts without the involvement of the captain or chief, a result of which is the chief is rarely called out of his home even though the South Burlington Police Department is one of the busiest in Vermont. While the department has an operations manual which establishes policies and procedures to follow for incidents which may arise during a particular shift, the patrol sergeants and lieutenants must go beyond simply ensuring that the officers take action consistent with established policies and procedures. c.f. AFSCME, Local 490 and Town of Bennington, 11 VLRB 89, 97. Winooski, supra, at 92. They exercise independent judgment in determining which officers will be assigned to which zones, deciding which officers will be called into work if there is a shortage of officers on their shift, effectively determining whether leave will be granted, and perhaps most important, directing the police work during their shift - i.e. deciding whether, when and what backup assistance should be provided, directing officers to continue or discontinue high speed pursuits, managing simultaneous events requiring police response, and determining how search and seizure situations will be handled.

This is not a case of patrol sergeants and lieutenants being more highly skilled individuals who generally perform the same duties as patrol officers. c.f. Bennington, supra, at 97. Lieutenants serve no patrol functions and sergeants patrol a zone only if a lieutenant is also on duty. Instead, it is apparent they are more closely aligned with the management of the department. This conclusion is bolstered by their participation in monthly staff meetings with the chief and

captain where various employee complaints and problems are addressed, and personnel issues involving patrol officers may be discussed.

Dinah Yessne  
Dinah Yessne, Chair  
Louis A. Toepfer  
Louis A. Toepfer

#### DISSENTING OPINION

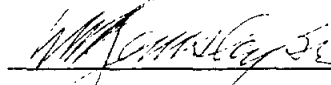
I disagree with my colleagues, and conclude that the patrol sergeants and lieutenants do not have the authority to assign and responsibly direct the patrol officers working on their shifts within the meaning of the statutory definition of supervisor.

In reality, there is little independent judgment exercised by patrol sergeants and lieutenants. The department is governed by an extensive manual which establishes policies and procedures for most law enforcement situations an officer may encounter in the line of duty. The patrol sergeants and lieutenants 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. Bennington, supra, at 97. Winooski, supra, at 92.

It is evident that the duties of patrol sergeants and lieutenants which do require use of independent judgment - i.e. assigning officers to zones, calling employees into work, granting or denying leave but only with the approval of the chief, deciding whether back assistance

should be provided, directing officers to continue or discontinue high speed pursuits - either constitute an insignificant part of duties or are infrequently exercised. Such duties do not result in supervisor status. Brattleboro, supra, at 351. Bennington, supra, at 96. Winooski, supra, at 93.

In assigning and directing employees, as well as all other areas, patrol sergeants and lieutenants do not possess effective supervisory authority.



William G. Kemsley, Sr.

ORDER

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

1. The lieutenants and patrol sergeants of the South Burlington Police Department are supervisory employees as defined in 21 VSA §1502(13) and thus are ineligible to be included in a bargaining unit pursuant to 21 VSA §1722(12)(B);

2. The sergeant of the Police Department who serves as the juvenile and community relations officer is not a supervisory employee as defined in 21 VSA §1502(13) and is appropriately included in the Police Department bargaining unit represented by the South Burlington Police Officers' Association;

3. Pursuant to stipulation of the parties, the dispatchers and the records secretary of the Police Department are appropriately included in the above bargaining unit;

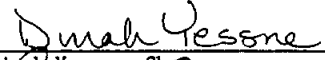
4. Pursuant to stipulation of the parties, the secretary to the Police Chief is excluded from the above bargaining unit as a confidential employee and the sergeant in the Bureau of Criminal Investigation Unit of the Police Department is excluded from the above bargaining unit as a supervisory employee; and

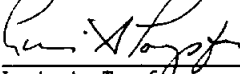
5. A representation election shall be conducted by the Labor Relations Board among the sergeant who serves as the juvenile and community relations officer, the dispatchers and the records secretary of the South Burlington Police

Department to determine whether they wish to be represented by the South Burlington Police Officers' Association or no union.

Dated this 21<sup>st</sup> day of November, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Dinah Yessne, Chair

  
Louis A. Toepfer