

VERMONT LABOR RELATIONS BOARD

LOCAL 1343, AFSCME,)	
AFL-CIO)	
)	
and)	DOCKET NO. 91-3
)	
CITY OF BURLINGTON)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 17, 1991, Local 1343, AFSCME, AFL-CIO ("Union") filed a Unit Clarification Petition with the Vermont Labor Relations Board. Therein, the Union requested that a newly created position of Operations Manager in the Street Division of the City of Burlington ("City") Department of Public Works be declared non-supervisory, and placed in the bargaining unit represented by the Union. On February 11, 1991, the City responded to the petition, stating that the position of Operations Manager has substantial supervisory responsibility and should remain outside the bargaining unit.

On May 16, 1991, a hearing was held before Labor Relations Board Members Charles H. McHugh, Chairman, Louis A. Toepfer, and Carroll P. Comstock in the Board hearing room in Montpelier. Lindol Atkins, Union President, represented the Union. Attorney James Dunn represented the City. The parties did not file briefs.

FINDINGS OF FACT

1. The Union was certified as the exclusive bargaining representative of City employees in 1968 and currently represents approximately 145 employees of the City, excluding confidential and supervisory employees.

2. The City reorganized its work force in 1989. Under the old organizational structure, there was a Water Resources Department. The Water Resources Department Manager reported to a Superintendent. The Water Resources Manager was responsible for three divisions: Metering, Distribution, and Treatment. The Distribution Division had one General Foreman and an Assistant Foreman. Under the Assistant Foreman were two Working Foremen, and under each working foreman was a four person crew of Main/Service Installers (City Exhibit 1).

3. Under the old organizational structure, neither the Water Resources Manager nor the General Foreman in the Distribution Division were in the bargaining unit represented by the Union. The Assistant Foreman was a bargaining unit position. William Paquette held the position of Assistant Foreman for many years.

4. Under the reorganization, which has been in effect for approximately two years, the Water Resources Department was abolished. The functions and employees of the former Distribution Division were included within the Street Division of the Department of Public Works. The General Foreman and Assistant Foreman positions in the former Distribution Division were abolished, and a newly created position of Operations Manager was created. Paquette became the Operations Manager (City Exhibit 2).

5. Under the current organizational structure, there are approximately 30 employees in the Street Division, supervised by a Street Division Head. The Division Head reports directly to the Director of Public Works (City Exhibit 2).

6. Brian Osborne is the Street Division Head. Two Operations Managers, Pat LeFebreve and William Paquette, report directly to Osborne (City Exhibit 2).

7. LeFebreve and employees under him are responsible for street maintenance, including maintenance of all City right-of-ways, sewer maintenance, and snowplowing. LeFebreve has 17 employees under him: one Group Leader and 16 Street Maintenance Workers, divided into three crews.

8. Paquette and employees under him are responsible for the maintaining and upgrading of the water distribution system in the City. Paquette has nine employees under him: two Working Foremen and seven Water Installers divided into two crews. There is one working foreman assigned to each crew (City Exhibit 2).

9. The City determined that both Operations Managers in the Street Division, Lefebreve and Paquette, were supervisory employees and were ineligible for inclusion in the bargaining unit represented by the Union. This has resulted in three of the approximately thirty employees in the Street Division being excluded from the bargaining unit (i.e., Osborne, Lefebreve, Paquette). The Union is not challenging the supervisory status of LeFebreve, but contends that Paquette is not a supervisor.

10. Paquette is responsible for prioritizing work and assigning work to the crews. Work orders from customers go directly to Paquette and he prepares a cost estimate for the customer. Paquette then assigns the work according to 1) when it should be done, and 2) by which crew. The Division Head has no direct involvement in this process. In Paquette's absence, a Working Foreman would perform the cost estimate.

11. Paquette spends approximately 50% of his time in the field. He visits job sites to monitor for productivity, quality, safety, and cost. He assesses the operation and gives directions to the Working Foremen. The Working Foremen perform laboring tasks along with other members of the crews, and provide routine supervision of work. On an average, Paquette visits job sites two or three times a day. Paquette performs no physical labor. The Street Division Head spends no significant time in the field and relies exclusively on Paquette for field responsibilities.

12. When Paquette is not in the field, he spends time on managerial and administrative tasks, including budgeting, scheduling, planning, ordering materials and performance evaluations.

13. If there is a vacancy on one of the work crews, Paquette interviews the candidates for the position along with the Division Head. Paquette then recommends a candidate. The Division Head has final hiring authority and is not bound by Paquette's recommendation. There has been at least one vacancy under the current structure and the Division Head has hired the individual recommended by Paquette.

14. Under the current organizational structure, there has been only one instance of employees needing to be transferred. In that instance, involving the establishment of a crew needed for the replacement of water meters, Paquette tentatively decided who would be appropriate for transfer, and then asked for volunteers. As it turned out, the number and identity of volunteers matched Paquette's tentative views, and all employees who ended up on the new crew had volunteered.

15. Under the current organizational structure, there have been two disciplinary actions, both oral reprimands, taken against members of the crews. In each instance, the Division Head and Paquette agreed on the discipline.

16. Paquette is responsible for the annual performance evaluations of the Working Foremen and Installers under him.

17. Paquette is responsible for staying within an annual operating budget of approximately \$200,000, including approximately \$60,000 to \$80,000 in distribution materials. The purchase of most distribution materials are put out to competitive bid. Paquette develops the product specifications for the bidding process. Working Foremen have the authority to order materials from the City's Storekeeper only if Paquette has delegated this authority.

18. Problems that occur outside of the normal working day with respect to the maintenance of the City's water distribution system are first handled by a "troubleshooter". If further action is needed, the Working Foremen are called. They have the authority to call out a crew if needed and the problem is one of a routine nature. If the Working Foremen are unable to handle the situation, they contact Paquette, who then goes to the site to supervise the handling of the problem.

OPINION

At issue is whether William Paquette, Operations Manager in the Street Division of the City's Department of Public Works, is a supervisory employee and, thus, ineligible to belong to the bargaining unit of City employees represented by the Union 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 is not of a merely routine or clerical nature but requires 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.

In cases where the issue is whether an employee's responsibility to assign work to employees and/or to direct them rises to the level sufficient to make them supervisors, the key determination is whether the employee is exercising independent

judgment or is simply ensuring that standard operating procedures are followed. If an employee is relaying instructions from a supervisor or ensuring that subordinates adhere to established procedures, the employee is not a supervisor. Local 1201, AFSCME and City of Rutland, 10 VLRB 141 (1987). Teamsters Local 597 and Burlington Housing Authority, 9 VLRB 126 (1986). City of Winooski and Winooski Police Employees' Association, 9 VLRB 85 (1986). However, if employees' duties go beyond simply ensuring that established policies and procedures are followed, and require use of independent judgment in directing and assigning employees, then the employee meets the statutory definition of supervisor. South Burlington Police Officers' Association and City of South Burlington, 11 VLRB 332 (1988).

We conclude that the evidence clearly indicates that Paquette's duties with respect to directing and assigning employees require him to use independent judgment. Paquette is directly responsible for the maintaining and upgrading of the water distribution system in the City. As such, he prioritizes the work and assigns it to the crews according to when it should be done and by which crew. Paquette's superior, the Division Head, has no direct involvement in this process. In addition, Paquette spends a significant amount of time in the field monitoring the work performed by the crews for productivity, quality, safety and cost. He assesses the operation and gives directions to the Working Foremen. The Division Head spends no significant time in the field and relies exclusively on Paquette for field responsibilities. These duties performed by Paquette,

and the Division Head's complete reliance on him for field responsibilities, persuade us that Paquette's responsibilities in assigning work and directing employees are not of a merely routine or clerical nature, but require the use of independent judgment.

Thus, we conclude Paquette is a supervisor. Further, although not necessary to our determination, it also is apparent, given the unrebutted testimony of the Street Division Head, that Paquette possesses at least limited supervisory authority to effectively recommend the hiring of employees and the taking of minor disciplinary action against them. The Division Head and Paquette have reached agreement on the two minor disciplinary actions of oral reprimands that have occurred under the new organizational structure. The Division Head has also followed Paquette's recommendation on the hiring of an employee. While these limited instances are not sufficient standing by themselves for us to definitively conclude that Paquette is a supervisor, under all the circumstances they do bolster our conclusion that he does possess effective supervisory authority.

ORDER

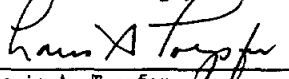
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

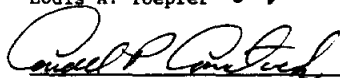
William Paquette, Operations Director in the Street Division of the Department of Public Works of the City of Burlington, is a supervisory employee as defined in 21 VSA § 1502(13) and, thus, is ineligible to be included in the bargaining unit of City employees represented by Local 1343, AFSCME, AFL-CIO, pursuant to 21 VSA 1722 (12)(B).

Dated this 9th day of July, 1991 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Carroll P. Comstock