

VERMONT LABOR RELATIONS BOARD

DEPARTMENT OF PUBLIC SAFETY)	
PERSONNEL DESIGNATION DISPUTE)	DOCKET NO. 90-71
(STATE POLICE SERGEANTS))	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 2, 1990, the Vermont State Employees' Association ("VSEA") filed a petition with the Vermont Labor Relations Board, disputing an action by the Commissioner of Personnel changing the designation of the position of Vermont State Police Sergeants in the Department of Public Safety from Non-Management to Supervisory effective July 1, 1992.

A hearing was held before Louis A. Toepfer, Acting Chairman, Catherine L. Frank, and Leslie G. Seaver at the Board hearing room in Montpelier on March 7, 1991. Michael Zimmerman, VSEA Staff Attorney, represented VSEA. Michael Siebert, Assistant Attorney General represented the State. At the hearing, the Board took judicial notice of the State Police Manual and the State Police Bargaining Unit Contract. On March 21, 1991, both parties filed Proposed Findings of Fact and Memoranda of Law.

FINDINGS OF FACT

1. The Vermont State Police is a quasi-military organization within the Department of Public Safety. There are 296 uniformed members of the State Police. The chain of command in the State Police, starting from the top, is: Commissioner of Public Safety, Director of the State Police (who holds the rank of Lieutenant Colonel), Major, Captain, Lieutenant, Sergeant, Senior Trooper, Trooper. Ninety-one uniformed members of the State Police hold the rank of Sergeant (State's Exhibit 2).

2. Only the Commissioner has the power to appoint, promote, transfer, suspend, discharge, or otherwise discipline members of the State Police.

3. One of the key management organizing principles of the State Police is that all members of the same rank are of equal authority, and each individual is expected to be able to perform the jobs of all individuals of that rank. Throughout a career in the Department, individuals are rotated from position to position within the same rank. From a management point of view, the rank of an individual, not position duties, are the main determining factor in placement of individuals in positions. This factor distinguishes the Department from other departments in State government.

4. The Department of Public Safety's Officer's Manual is binding on uniformed members of the State Police. It consists of six sections and includes Rules and Regulations, which address, among other matters, disciplinary and promotional procedures. The Manual also has an Operational section that is divided into 15 chapters, which cover in detail the policies and procedures of the Department that officers are expected to follow in the areas of traffic enforcement, traffic and other accident investigation, patrols, criminal investigation, criminal procedures, work rules, crowd control, special departmental services, care and use of property and equipment, personal appearance and military courtesy, physical fitness, field reporting procedures, hazardous materials, training and other related activities.

5. There are three separate divisions in the State Police: Law Enforcement Division (commonly called the Field Force

Division), Criminal Division, and Support Services Division. Each Division is headed by a Division Commander who holds the rank of Major. Each Division Commander reports directly to the Director of the State Police (State's Exhibit 2, p. 3).

FIELD FORCE

6. The Field Force is organized into five troops, A through E. Each Troop is headed by a Troop Commander who holds the rank of Captain. Each Troop Commander reports to the Field Force Division Commander (State's Exhibit 2, p.6).

7. Within each Troop there are 2 - 3 Stations, each headed by a Station Commander, who holds the rank of Lieutenant. Each Station Commander reports to a Troop Commander (State's Exhibit 2, p. 7, 10, 14, 18, 21).

8. Under each Station Commander, there are 2 - 3 Patrol Commanders, who hold the rank of Sergeant. Each Patrol Commander reports to the Station Commander. Under each Patrol Commander there are Troopers. (State's Exhibit 2, p. 8 - 9, 11 - 13, 15 - 17, 19 - 20, 22 - 23).

9. Each Station Commander is responsible for the State Police activity in the geographic area of his station. He is a direct supervisor of Patrol Commanders, civilian employees and employees of outposts in the station's geographic areas.

10. Among the duties of a Station Commander are the following: 1) on a monthly basis, designates patrol areas and schedules officers to the areas, although the scheduling of employees may be designated to the Patrol Commanders; 2) approves leave requests; 3) reviews Patrol Commanders' daily logs; 4)

reviews, with the opportunity to comment on, Patrol Commanders' performance evaluations of troopers; and 5) supervises dispatchers.

11. Generally, there are two regular daily shifts during which uniformed State Police members are on duty at a station: a day shift and an evening shift. Generally, there are no uniformed members on duty between the hours of 2:30 a.m. and 6:00 a.m., although there is a dispatcher on duty during those hours. Generally, there is a Station Commander on duty only during the day shift and only on weekdays. There generally is a Patrol Commander on duty during each shift, although there are occasions where a Patrol Commander is not on duty. In the absence of a Station Commander, there is a Lieutenant assigned to serve as a zone duty officer who act as a senior officer (i.e., senior to Sergeants on duty as patrol commanders) if a decision at that level of authority is needed.

12. Patrol Commanders are required to spend much of their time on administrative responsibilities, involving paperwork and working in the station.

13. Although patrol areas are set in advance by Station Commanders, Patrol Commanders may change a Trooper's patrol area if circumstances require it due to the occurrence of a major incident on the shift.

14. The time spent by Patrol Commanders doing field work (i.e., the same work as that done by Troopers) varies, depending on the shift involved and the number of Troopers on duty. There are shifts where the Patrol Commander is the only officer on duty.

15. Patrol Commanders maintain daily logs on the Troopers under them in the chain of command.

16. Patrol Commanders write the periodic performance evaluations on the Troopers under them in the chain of command. The Station Commanders review those evaluations, and comment on them. Only Station Commanders and above have the authority to place a uniformed member in a prescriptive period for remediation or a warning period.

17. Although leave requests are approved by the Station Commander, Patrol Commanders may make leave adjustments in the absence of the Station Commander.

18. During those hours when a Dispatcher is the only employee on duty, the Dispatcher may call a Patrol Commander to ascertain whether an officer should be called out to respond to a situation. The Patrol Commander will decide whether an officer should be called out. The determination on which officer will be called out generally is dictated by who just went off or is coming on duty.

19. Vehicle maintenance is the responsibility of Patrol Commanders, but detailed policies and procedures exist in this area. (Department of Public Safety Officer's Manual, Section V, Policies and Procedures, Chapter 9, Care and Use of Property and Equipment).

20. Patrol Commanders may be asked by Troopers in the field to answer questions. One area where questions may arise is with respect to search and seizure issues. Many of the answers to questions which may arise are contained in the Policies and

Procedure Section of the Department of Public Safety Officer's Manual.

21. If a major event occurs on a shift, such as a homicide or vehicle fatality, the Patrol Commander must contact the Station Commander, or, in his absence, the Lieutenant serving as zone duty officer, who then will coordinate the appropriate response.

22. There are 39 Patrol Commanders holding the rank of Sergeant in the Field Force Division. Other officers holding the rank of Sergeant in the Field Force Division include five Crime Prevention Officers, a Marine Supervisor, and a Commercial Vehicle Enforcement Supervisor. Only the Commercial Vehicle Enforcement Supervisor has officers, two Troopers, directly under him in the chain of command. There is no evidence concerning specific supervisory responsibilities the Commercial Vehicle Enforcement Supervisor has with respect to the Troopers (State's Exhibit 2, p. 6, 7, 10, 14, 18, 21).

23. The Marine Supervisor enforces the marine and safety boat laws in Vermont and is responsible for coordinating all boating programs. The Marine Supervisor has no permanent Troopers under him in the chain of command, but does have auxiliary officers under him in the summer and winter.

SUPPORT SERVICES

24. There are officers holding the rank of Sergeant working as Assistant Transportation Officer, Training Officers, and Assistant Unit Coordinator. None of these officers have other officers or civilian employees under them in the chain of command (State's Exhibit 2, p. 25, 28).

CRIMINAL DIVISION

25. There are three officers holding the rank of Sergeant working in the Governor's security unit, one of whom serves as the lead officer. There also are Sergeants serving as an Intelligence Officer, a Fraud Investigator, two Polygraph Examiners, and seven Fire Investigators in the Criminal Division. There is no evidence that any of these employees have specific supervisory responsibilities over other employees (State's Exhibit 2, page 29).

26. There are also 24 Detective Sergeants within the Criminal Division. There is no evidence that any of these employees have specific supervisory responsibilities over other employees (State's Exhibit 2, p. 29, 31, 32, 33, 34, 35).

27. Two sergeants in the Criminal Division are Special Investigative Unit (SIU) Field Supervisors. They each have 3 - 4 Troopers who report to them. The SIU Field Supervisors are undercover drug investigators, each in charge of a Drug Task Force in the state, and each reports to the SIU Supervisor who holds the rank of Lieutenant (State's Exhibit 2, page 29).

28. The SIU Field Supervisors are out in the field. They do not work fixed shifts. They generally work out of rented space.

29. The SIU Field Supervisor are responsible for daily performance logs of the Troopers under them. They also write the Troopers' performance evaluations.

30. SIU Field Supervisors clear their activities (undercover operations) with the Lieutenant a majority of the time. Other times they are required to make quick decisions without time to involve their supervisor.

31. Field Supervisors and the officers under them often have to purchase illegal drugs as part of their undercover operations. They do so with money from a special account. Field Supervisors need the Lieutenant's approval to use this account, but sometime have to make quick decisions to use these funds without time to obtain advance approval of their supervisor.

32. Due to the nature of their work and the fact that they are working in the field, SIU field supervisors at times decide which officers to perform specific duties involving an undercover operation without consulting with their supervisor. It is the nature of undercover work that SIU Field Supervisors need to closely supervise the officers beneath them during undercover operations.

OPINION

The issue before us is whether the State Police Sergeants are supervisors as defined in 3 VSA §902(16). 3 VSA § 902 (16) provides:

"Supervisory Employee" means an individual finally determined by the board as having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibility 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 power "not of a merely routine or clerical nature but requiring the use of independent judgment." Department of Public Safety Personnel

Designation Disputes, 5 VLRB 141, 163 (1982). Firefighters of Brattleboro, Local 1628 v. Brattleboro Fire Department, Town of Brattleboro, 138 VT. 347 (1980).

It is the State's position that State Police Sergeants performing the duties of Patrol Commander, SIU Field Supervisor, Marine Supervisor, and Supervisor of the Governor's Security Unit meet the definition of "supervisory employee." Employees assigned to such duties make up 43 of 91 Sergeants in the State Police. The State further maintains that the Board has no choice but to designate all Sergeants as supervisory when roughly half of their number perform supervisory duties, and any of the remaining sergeants may be rotated into those duties at any time.

At the outset, we note that the Board continues to hold the view expressed in Department of Public Safety, supra, that all Sergeants be given the same designations, either all supervisory or all non-management, as their equals in rank. This is due to the nature of their employment where all members of the same rank are of equal authority and individuals are rotated from position to position within the same rank. Id. To place equals of rank in different bargaining units would be to ignore the unique nature of State Police employment and would result in unsettled labor relations. Id. The VSEA and the State agree that we should give all Sergeants the same designations, and we will hold to our precedent.

The State contends that the 43 Sergeants whom the State contends are supervisors possess supervisory authority because they have authority in the interest of the employer to assign other employees and/or have responsibility to direct them or

effectively to recommend such action, and because their authority is not of a merely routine or clerical nature but requires the use of independent judgment. The State makes no claim that Sergeants have the authority to suspend, discharge or otherwise discipline, hire, promote, transfer, lay off, recall or reward employees, or adjust their grievances, or effectively recommend such action.

In cases where it is alleged that an employee's responsibility to assign work to employees or direct them rises to a 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 employees meet the statutory definition of supervisor. South Burlington Police Officers' Association and City of South Burlington, 11 VLRB 332 (1988).

We first discuss the Patrol Commanders, since they are 39 of the 43 employees whom the State contends are supervisors. There is insufficient evidence to conclude that the Patrol Commanders are supervisors. The State Police are governed by extensive

policies and procedures with respect to the major areas of work engaged in by a Trooper on duty, and there is insufficient evidence for us to conclude that a Troop Commander generally is doing anything other than assigning and directing the work of Troopers pursuant to these established policies and procedures. Thus, we cannot conclude that Patrol Commanders are exercising independent judgment in this regard.

While there may be occasions where Patrol Commanders exercise independent judgement in assigning and directing employees, the State presented insufficient evidence to indicate that this occurred on more than an infrequent basis or that they were significant in comparison with overall duties. Such infrequent or insignificant duties do not make an employee a supervisor. Brattleboro, supra, at 351. AFSCME Local 490 and Town of Bennington, ___ Vt ___ (Dec. 15, 1989).

Although Patrol Commanders initiate performance evaluations of Troopers on their shift, we conclude that this is insufficient to constitute supervisory authority. They are unable to take any adverse action against an employee as a result of unsatisfactory performance evaluations, such as placing them in a prescriptive period of remediation or a warning period, and there is no evidence that they can reward any employees receiving exemplary evaluations.

We turn to discussing the other Sergeants whom the State contends are supervisors. There is no evidence before us indicating that the lead Sergeant of the Governor's Security Unit or the Marine Supervisor exercise specific supervisory responsibilities over any employees.

It is apparent that the two SIU Field Supervisors, given the nature of the work they do and their relatively isolated location in the field, do exercise supervisory authority over Troopers assigned to their respective drug investigation units. They have to closely supervise their officers in an undercover operation, and at times will assign particular individuals to perform specific duties without an opportunity for review and approval by their supervisor. However, since they are the only two of 91 Sergeants possessing supervisory authority, we conclude that they should not be designated as supervisors given our decision, previously discussed, to designate Sergeants as either all supervisory or all non-management.

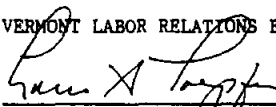
ORDER

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


The designation of the Commissioner of Personnel, making State Police Sergeants employed by the Vermont Department of Public Safety, supervisory employees effective July 1, 1992, is REVERSED, as they are non-management employees who shall remain as members of the State Police Bargaining Unit.

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

VERMONT LABOR RELATIONS BOARD


Louis A. Toepfer, Acting
Chairman


Catherine L. Frank


Leslie G. Seaver