

VERMONT LABOR RELATIONS BOARD

UNITED ELECTRICAL, RADIO AND)
MACHINE WORKERS OF AMERICA)

and)

TOWN OF SPRINGFIELD)

DOCKET NO. 96-82

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 24, 1996, the United Electrical, Radio and Machine Workers of America ("Union") filed a Petition for Election of Collective Bargaining Representative to represent all police officers and dispatchers employed by the Town of Springfield ("Employer"). On November 5, 1996, the Union amended its petition to clarify that the Union was seeking to represent all police officers under the rank of lieutenant and police dispatchers. On November 13, 1996, the Employer responded to the amended petition and raised a question of unit determination, contending that sergeants are supervisors and, thus, should be excluded from the proposed bargaining unit.

On December 5, 1996, a hearing was held in Montpelier before Vermont Labor Board Members Catherine Frank, Chairperson; Carroll Comstock and Richard Park. Attorney Stephen Ankuda represented the Employer. Union Field Organizer Harry Authelet represented the Union. The parties filed post hearing briefs on December 20, 1996.

FINDINGS OF FACT

1. The Springfield Police Department consists of a chief, a lieutenant, three sergeants, three corporals, a criminal detective, six police or patrol officers and four dispatchers.
2. The Department has 24 hour coverage. The chief, lieutenant and criminal detective work the day shift, Monday through Friday. The sergeants, corporals and patrol officers work rotating shifts: 7:00 a.m - 3:00 p.m., 3:00 p.m. - 11:00 p.m. and 11:00 p.m. - 7:00 a.m. Each officer works 5 days per week. A sergeant is in charge of each shift from Tuesday through Saturday.
3. There are routinely no sergeants on duty on Sunday and Monday. In the absence of a sergeant, a corporal typically assumes the sergeant's duties. If a corporal is not available, the senior ranking officer is in charge of the shift.
4. Sergeant John Esposito is the department's scheduling officer and prepares the monthly patrol work schedule. Assignments are rotated every four weeks.
5. Except for emergencies, officers must request time off at least 10 days in advance. The scheduling sergeant has the discretion to deny leave if a request is not made in a timely manner and there is no emergency. Sergeant Esposito has denied leave based on this criteria. He also has waived the ten day requirement. If there is a dispute among employees requesting the same time off, the scheduling sergeant handles the dispute (Employer Exhibit T - 9).
6. Sergeants perform six month performance evaluations on probationary employees. They also perform annual written performance evaluations on

subordinate officers or employees and may recommend a merit or step increase in such performance evaluations. The subordinate employee reviews the sergeant's evaluation and recommendation with the evaluating sergeant. The evaluation and recommendation is then forwarded to the lieutenant and the chief. An employee may appeal a performance evaluation to the police chief and to the town manager.

7. The lieutenant and chief rely on the sergeants' performance evaluations of subordinate officers to determine whether such officers will receive merit increases. Merit increases are not automatic and are not always awarded.

8. Sergeant Esposito has held the rank of sergeant since 1989 - 1990 and *generally performs approximately six performance evaluations each year. He has never given an unfavorable performance rating in the six years he has prepared performance evaluations and has always recommended a merit or step increase* (Employer Exhibit T- 8).

9. A "performance statement" is a letter of recognition placed in an *employee's file for outstanding service in the line of duty. On or about March 17, 1994, a patrol officer recommended that a dispatcher receive such recognition for his actions during an assault. Sergeant Esposito forwarded the request to the chief for review and recommendation. Esposito did not issue a performance statement* (Employer Exhibit T - 10).

10. *Sergeants routinely attend staff meetings with the chief and lieutenant.* Department policies, budget issues and disciplinary issues may be discussed at staff meetings.

11. Sergeants are required to prepare quarterly reports which summarize

activities and problems in the department.

12. Sergeants have the authority to informally counsel employees and issue oral reprimands. Although theoretically sergeants possess the authority to issue "on the spot" suspensions to employees, there has never been an "on the spot" suspension. Authority to issue other suspensions and dismiss employees resides with the chief. An officer may receive an oral reprimand or informal counseling for returning a cruiser without gas or leaving food in the cruiser. In the absence of a sergeant, the officer in charge has the same authority as a sergeant to informally counsel or orally reprimand an employee.

13. When officers arrive at the beginning of their shift, the officer in charge of the preceding shift provides any pertinent information to the sergeant or officer in charge of the shift. All the officers, including the sergeant, then generally disperse and have little contact with each other. Sergeants spend approximately 80 percent of their time on patrol duties; the other 20 percent is spent on administrative duties, such as attending staff meetings, preparing quarterly reports, and reviewing incident reports for accuracy.

14. As calls come into the department during a shift, or as officers observe problems, such information is first passed on to the sergeant or the officer in charge of the shift. The sergeant, or officer in charge of the shift, either handles the situation or asks someone else to handle the situation if another officer is in the problem area.

15. Sergeants have access to personnel files.

16. Neither Corporals nor senior officers in charge of a shift prepare

quarterly reports, prepare performance evaluations, attend staff meetings, prepare the monthly work schedule, grant or deny leave, or have access to personnel files.

OPINION

At issue is whether sergeants are supervisors, and thus ineligible to belong to a bargaining unit pursuant to 21 V.S.A. Sections 1502 and 1722.

Supervisor is defined in 21 V.S.A. Section 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 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 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, 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, 138 Vt. at 351.

The existence of actual power, rather than the frequency of its use, determines supervisory status. AFSCME Local 490 and Town of Bennington, 153 Vt. 318 (1989). However infrequently used, the power exercised must be genuine. Id. Also, the Board has discretion to conclude supervisory status does not exist although some technically supervisory duties are performed, if such duties are

insignificant in comparison with overall duties. Id. Otherwise, an employer could circumvent the very spirit and intent of the statute by creating de minimus supervisory duties for the sole purpose of excluding classes of employees from union representation. Id.

The Employer contends that the sergeants are supervisors because they have the authority to transfer, suspend, promote, discharge, assign, reward, discipline and the authority to adjust grievances; and that the exercise of such authority requires the use of independent judgement.

The evidence clearly does not support the Employer's claim that sergeants have the authority to transfer, promote, discharge or the authority to adjust grievances. More extended discussion is warranted as to whether sergeants have the authority to assign, discipline or reward employees.

The Employer contends that the sergeants possess the supervisory authority of assigning and directing employees during their shift. In determining whether the responsibility to assign and direct the work of employees arises to a level sufficient to make the sergeants supervisors, we look to our many previous cases focusing on the assigning and directing responsibilities of employees. 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). City of Winooski and Winooski Police Employees' Association, 9 VLRB 85 (1986).

However, if employees' duties go beyond simply ensuring established policies and procedures are followed, and require use of independent judgment in directing and assigning employees, then employees are supervisors. South Burlington Police Officers' Association and City of South Burlington, 11 VLRB 332 (1988). c.f., South Burlington Police Officers' Association and City of South Burlington, 18 VLRB 116 (1995). Exercise of independent judgment in assigning and directing employees must occur on a more than infrequent basis or be significant in comparison with overall duties to make one a supervisor. AFSCME Local 490 and Town of Bennington, 153 Vt. 318 (1989). Department of Public Safety Personnel Designation Disputes (re: State Police Sergeants), 14 VLRB 176 (1991).

In applying these standards to the facts of this case, we conclude that the duties of the sergeants with respect to assigning and directing employees do not rise to the level of supervisory status. The evidence in this regard is general and sparse. The sergeants perform patrol duties approximately 80 percent of the time. There is little contact between the sergeant in charge of the shift and the patrol officers after they disperse at the beginning of a shift. Although the evidence indicates that calls which come into the department are passed on to the sergeant as he is performing his patrol duties, and the sergeant either handles the situation himself or asks someone near the problem area to handle the situation, the evidence is insufficient to indicate how much independent judgment is exercised in this regard or how significant this is in comparison to overall duties.

Also, the fact that the scheduling sergeant prepares the monthly patrol schedule and has the authority to grant or deny leave time is not sufficient to result

in a conclusion that sergeants assign and responsibly direct employees within the statutory definition of supervisor. The scheduling sergeant is not using independent judgment in preparing the monthly work schedule; he is merely following standard procedures by assigning work on a four week rotating basis. The granting or denying of leave is not a duty that occurs on a more than infrequent basis and is insignificant in comparison with overall duties.

In sum, we conclude that the duties of the sergeants with respect to directing and assigning other employees do not rise to the level of supervisory status. It is of particular significance to us in this regard that sergeants spend most of their shift performing patrol duties, that patrol officers generally perform their duties on a shift with little contact with the sergeant, and that patrol officers serve as the officer in charge of the shift on at least six shifts per week. In doing so, the patrol officers have the same responsibility with respect to directing and assigning officers as sergeants. Bennington, 11 VLRB 89, 97-98 (1988). *Affirmed*, 153 Vt 318, 323-24 (1989).

The Employer also contends that the sergeants are supervisors because they have the authority to discipline. The authority to take a specific disciplinary action, or effectively recommend such an action, must be demonstrated for supervisory status to be found. Teamsters Local 597 and Burlington Housing Authority, 9 VLRB 85 (1986). If the employee can recommend disciplinary action, but the recommendation is not followed, then the employee is not a supervisor. Local 1343, AFSCME and St. Albans Fire Department, 10 VLRB 99 (1987). The authority to send an employee home for the remainder of the shift by itself is insufficient to constitute supervisory authority. IAFF and Town of Hartford, 146 Vt. 371 (1985).

Any disciplinary authority possessed by the sergeants is very limited and insufficient for us to conclude that the sergeants possess effective authority to discipline employees within the meaning of the statutory definition. The primary disciplinary authority in the department lies with the police chief. The authority of sergeants is limited to counseling and orally reprimanding employees for such actions as returning an unkempt cruiser or a cruiser with no gas. In concluding that such limited authority does not rise to the level of supervisory status, we find it significant that, on at least six shifts per week, corporals or patrol officers have the same authority to counsel or orally reprimand employees as sergeants.

Finally, the Employer contends that the sergeants have the authority to reward employees within the statutory definition of supervisor because the annual performance evaluations they prepare on subordinate employees determines whether merit or step increases will be awarded. The Board has determined that employees who prepare performance evaluations are not supervisors where he or she is unable to take any adverse action against an employee being evaluated, such as placing an employee in a warning period, or where he or she is unable to reward an employee who receives exemplary evaluations. Id. Department of Public Safety Personnel Designation Dispute (State Police Sergeants) , 14 VLRB 176, 186 (1991). City of Montpelier and Local 2287, IAFF, 18 VLRB 374, 389-90 (1995).

We conclude that the evidence is too general, vague and contradictory for us to determine that sergeants possess effective authority to reward employees within the meaning of the statutory definition. There was evidence that the sergeants prepare annual performance evaluations which are relied on by the lieutenant and chief for

determining merit pay; there also was evidence that merit increases are not automatic. However, we find it notable that a sergeant who has been performing performance evaluations for approximately six years has never given a subordinate employee an unfavorable performance evaluation and has always recommended a merit or step increase. The evidence also was vague and confusing with respect to the role of sergeants in determining whether an employee will be granted a "performance statement" award.

ORDER

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

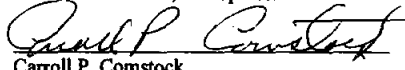
1. The sergeants are not supervisory employees as defined in 21 V.S.A. Section 1502(13), and are eligible to be included in a bargaining unit represented by the United Electrical, Radio and Machine Workers of America; and
2. The Vermont Labor Relations Board will conduct a representation election among all police officers under the rank of lieutenant and police dispatchers employed by the Town of Springfield to determine whether they wish to be represented by the United Electrical, Radio and Machine Workers of America.

Dated this 6th day of February, 1997, at Montpelier, Vermont.


VERMONT LABOR RELATIONS BOARD



Catherine L. Frank, Chairperson



Carroll P. Comstock



Richard W. Park