

VERMONT LABOR RELATIONS BOARD

SPRINGFIELD FIREFIGHTERS LOCAL #2750,)	
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,)	
AFL-CIO, CLC)	
)	DOCKET NO. 80-12
and)	
)	
TOWN OF SPRINGFIELD)	

FINDINGS OF FACT, OPINION, AND ORDER

Statement of the Case

On February 5, 1980, the Springfield Firefighters Local #2750, International Association of Firefighters, AFL-CIO, CLC (hereinafter, the "Petitioner"), filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board, pursuant to 21 V.S.A. §1724(a)(1), seeking representation of the full-time firefighters employed by the Town of Springfield (hereinafter, the "Employer"). The petition sets forth as an appropriate bargaining unit, one employee unit consisting of six firefighters and two fire-lieutenants (hereinafter, "lieutenants").

By letter dated and filed on February 26, 1980, from Michael Valuk, Town Manager of the Town of Springfield, the Employer indicated a question of unit determination exists as to the status of the two lieutenants and requested a hearing.

On May 1, 1980, a hearing on this matter was held in the Board hearing room in Montpelier, Vermont, before members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown. At the hearing, Richard Whitney, agent for the International Association of Firefighters, represented the Petitioner. Attorney Allan Drachman represented the Employer.

Memoranda and requests for findings were filed on May 15, 1980, by firefighter John Wood, president of the petitioning firefighter association, and Allan Drachman, counsel for the Employer.

FINDINGS OF FACT

1. The Town of Springfield, Vermont, is a "municipal employer" within the meaning of 21 V.S.A. §1727(13) of the Municipal Employee Relations Act.

2. The Town of Springfield Fire Department (hereinafter, the "Department") consists of thirty-nine "call" or volunteer firefighters and the following full-time employees:

- 1 Chief,
- 1 Deputy Chief,
- 2 Lieutenants, and
- 6 Firefighters.

3. The parties agree that the six firefighters employed by the Department are "municipal employees" within the meaning of 21 V.S.A. §1722(12), and as such, are eligible for inclusion in the bargaining unit proposed by the Petitioner.

4. The parties also agree that the Department personnel designated as chief and deputy chief are not "municipal employees" pursuant to 21 V.S.A. §1722(12)(B), which excludes those "individuals employed as supervisors" from the bargaining unit.

5. The Petitioner also seeks to include the two lieutenants in the bargaining unit.

6. There are no job descriptions available at present which detail the duties required of Department personnel in their respective positions.

7. Firefighters and lieutenants are scheduled to work the same number of hours over a three week scheduling period.

8. On any twenty-four hour shift, a lieutenant or a deputy chief serves as the shift commander.

9. A shift commander, whether a lieutenant or a deputy chief, is responsible for implementing the daily duty roster. The daily duty roster was created from a list of "housekeeping" chores which was compiled by all Department personnel and was then revised and refined by the fire chief. It consists of those routine maintenance and cleaning functions necessary to the operation of the Department. The roster includes such activities as: cleaning the firehouse station and equipment; cleaning the Department's nine vehicles; repairing equipment (hoses, for example); changing hose bed; and inspecting equipment (such as radios and pumps) to ensure it is in working order.

10. A shift commander is responsible for performing those duties listed on the daily duty roster plus occasional special projects in the same manner as the firefighters. No consideration as to rank is made in the assignment of these day-to-day "housekeeping" chores.

11. Lieutenants, as shift commanders, are responsible for submitting "monthly fire reports" to the chief which record Department responses to calls on a monthly basis. Lieutenants are also responsible for making budget requests for equipment.

12. Not infrequently, when a lieutenant is out sick, on personal or vacation leave, or takes a holiday, a firefighter will serve as shift commander. Likewise, a lieutenant may be designated by the chief to serve as deputy chief, on a substitute basis.

13. When a call comes in requiring Department response, the normal procedure is for the shift commander and one firefighter to go out and for one firefighter to remain at the station. Calls regarding gasoline or chemical

spills, chimney fires, and smoke inspections, for example, are considered "minor" or "routine" and usually require only the shift commander and the firefighter to respond. At the scene of a "working" or active fire, and in the absence of a superior officer (the chief or deputy chief), a lieutenant directs firefighters in the methods and means employed in fighting a fire. Similarly, at the scene of a major fire and when a superior officer is on duty, lieutenants may be charged with the direction of some firefighters on a designated portion of the fire. In these situations, the lieutenant will make decisions regarding calls for mutual aid and what kind of equipment should be used.

14. On an emergency basis, a lieutenant may relieve from duty a firefighter he believes to be unfit.

15. The Department "officers," namely the chief, deputy chief, and two lieutenants, meet on an unscheduled but regular basis to discuss Department policy and operations. Typically at these meetings, any and all of the following subjects may be discussed:

- a. training programs;
- b. development and implementation of firefighting policy; and
- c. employee relations, including discipline problems and their resolution.

16. The chief, a member of the Department for eleven years who has been promoted through the ranks, has tried to introduce an element of democracy into the operation of the Department. He has instituted the "officer meetings" to permit subordinates, through those officers, to air their suggestions, comments and complaints, etc., before him. This is a new policy and system and there was no specific evidence of the lieutenants' effectiveness in this group decision making process. Certainly, the chief acknowledged and listened to their suggestions, but there is insufficient evidence to show

the lieutenants' recommendations are any more likely to be implemented than those recommendations received from firefighters.

17. At officer meetings, the chief solicits suggestions and comments from the lieutenants regarding the general operation of the Department. Lieutenants are given an opportunity to recommend Department policy and policy changes. However, once policies are defined and established by the chief, lieutenants serving as shift commanders are responsible for implementing those policies without variation as directed by the chief or his deputy.

18. Two areas of responsibility have been delegated specifically to the lieutenants, community relations and a community fire inspection program.

19. The incumbent chief has recently been promoted from deputy chief. He testified that lieutenants have the authority to suspend firefighters for up to three days. There is no written directive containing this policy.

20. No lieutenant has ever suspended a firefighter on his shift for a period up to three days, or recommended a major suspension which has been upheld by the chief and the town manager.

21. When a lieutenant has a discipline problem with a firefighter on his shift, that lieutenant generally will bring the matter to the attention of the deputy chief and/or the chief. Thereafter, the lieutenant, the firefighter, and the superior officer will meet together to try and resolve the matter, at which time a particular disciplinary action may be discussed and recommended.

22. There is no clear written Employer policy regarding personnel matters within the fire department. The town personnel policy provides that the town manager has final authority regarding hiring, firing, and serious

discipline for most town employees. As a department head, the chief has the authority to effectively recommend such action.

23. There is insufficient credible evidence to warrant a finding that lieutenants can effectively recommend substantive personnel action that will be carried through the chain of command unaltered, to be implemented by the town manager.

24. In the past year, a disciplinary problem arose in the Department regarding frequent incoming personal calls to a particular firefighter. It was recommended, by a lieutenant, and later the deputy chief and the chief, to suspend that firefighter for failing to resolve that problem. When the town personnel board and town manager reviewed the case, it was determined the conditions for suspension did not occur and no suspension was warranted. The lieutenant's recommendation, even with the approval of his superior officers, was rejected.

25. The fact that the town manager did not follow the chief's recommendation in that case does not diminish that authority generally.

OPINION

The issue here is whether or not a lieutenant of the Town of Springfield Fire Department is a "municipal employee" within the meaning of 21 V.S.A. §1722(12), and therefore, is properly includable in a bargaining unit of the Town of Springfield Firefighters.

It is the position of the Employer that they be excluded as "individuals employed as supervisors," pursuant to 21 V.S.A. §1722(12) in combination with 21 V.S.A. §1722(12)(B). A "supervisor" is defined in 21 V.S.A. §1502(13) as:

[A]n 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 summarizing the Board's previous decisions on similar questions of supervisory status in other Vermont fire departments, we stated in the Firefighters of Brattleboro, Vermont, Local 2628 and Brattleboro Fire Department, Town of Brattleboro, 1 VLRB 248, 252 (1978), that:

... the determination of who is a supervisor is a question of fact ... [and that] ...

In each case, the determination of this issue was based on the particular set of circumstances and facts surrounding the composition and operation of the fire department in each town or city.

(cites omitted)

On the facts peculiar to this case, we conclude the lieutenants are not supervisors within the meaning of the Act, for the following reasons.

With the exception of their responsibilities for writing monthly reports and in developing a community fire inspection and community relations program, the lieutenants perform, in general, the same duties as firefighters. They do not make or effectively recommend major policy or personnel decisions.

A review of the powers listed in the statutory definition of a supervisor and the facts of this case reveals only two which may be in evidence, the authority to discipline (including suspension) and the authority to assign or direct firefighters. There was insufficient credible evidence for our consideration of the lieutenant's authority to hire, transfer, lay off, recall, promote, discharge, reward, or adjust grievances. Where the lists of powers is disjunctive, we hold here as in our decision in the Brattleboro case, supra at 255, "that the possession of any one of the listed powers is sufficient to confer supervisory status."

We first consider the authority of a lieutenant to discipline firefighters. A lieutenant may be, and often is, the agent through which his superiors are apprised of disciplinary problems. He may then advise his superiors, often in the presence of the affected firefighter, as to a recommended course of action. However, no disciplinary action is effected on this basis alone. A lieutenant's authority as shift commander to recommend discipline is extremely limited, as the case of the only instance of lieutenant initiated discipline on record demonstrated (see finding #24, infra). Lieutenant recommendations, even with the support of the chief, (without which, the recommendation would not stand) are subject to review and rejection by the town manager. In this regard, our Court stated in affirming our determination in the Brattleboro case (Docket No. 238-78 and 284-78, Slip Op., p. 3, May 13, 1980), that

The statutory test [of supervisory authority] is whether or not an individual can effectively exercise the authority granted him ...

The fact that the lieutenants in this case have never effectively disciplined a firefighter independent of their superiors is sufficient proof that they cannot do so.

The lieutenants' effective power to direct and assign is doubtful, too. We find those instances in which the lieutenants direct other firefighters are not sufficient evidence of supervisory status to warrant their exclusion from a small bargaining unit in a small department. The exercise of that power is either routine or on a substitute basis by designation of the chief.

The duties of the lieutenant at the station are of a routine nature, generally. As shift commander, a lieutenant on duty at the station oversees activities already directed by the chief on a daily duty roster. He does

not vary from that roster when assigning work. Likewise, at the scene of a fire and in the absence of a superior officer, he is merely substituting for a superior officer until one arrives except for those fires of a routine nature that do not require a superior officer.

The other situation in which a lieutenant directs firefighters in action is at large fires, at the instruction of a superior officer. We would characterize these as infrequent emergency situations, in which the lieutenant actually augments the existing supervisory command. In affirming our conclusion on a similar situation in the Brattleboro case, supra p. 3-4, our Court stated that:

An employee does not acquire a supervisor's status by reason of temporarily taking over the supervisor's duties in his absence. Nor do rare and infrequent supervisory acts change the status of an employee to a "supervisor." (cites omitted)

We conclude our assessment of the lieutenants' authority to either assign, direct, or discipline employees by asking the question included in the second part of the statutory definition. Does that exercise of authority require the use of independent judgment?

We find no exercise of powers in evidence here which meets the "independent judgment" test of supervisory status, as required by the definition.

ORDER

NOW, THEREFORE, it is hereby ORDERED pursuant to 21 V.S.A. §1724 that:

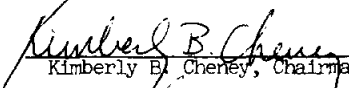
1. A collective bargaining unit consisting of the full-time firefighters and lieutenants is appropriate in the Town of Springfield Fire Department; and that

2. A secret ballot election shall be conducted by this Board within thirty days (or as the Board may

order) to determine whether or not these employees wish to be represented exclusively for collective bargaining by the International Association of Firefighters, Local #2750, AFL-CIO, CLC, or No Union.

Dated this 19th day of June, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kempley, Sr.


Robert H. Brown