BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

OF THE STATE OF KANSAS

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| IN THE MATTER OF<br><br>The Petition filed by Junction City Police Officers Association for unit determination for certain employees of the City of Junction City, Kansas (Police Department). | CASE NO: 75-UD-2-1984 |

O R D E R

Comes now this 18th day of June, 1984, the above captioned matter for consideration by the Public Employee Relations Board. This matter comes before the Board on petition of the Junction City Police Officers Association and seeks the Board to determine an appropriate bargaining unit consisting of the classifications of Patrolmen, Corporals, Sergeants, Lieutenants and Captains. The petition further seeks the exclusion of the Chief of Police and the Assistant Chief of Police.

APPEARANCES

Junction City Police Officers Association appears by and through Officer A. B. Farrow, Junction City Police Department, Municipal Building, Seventh and Jefferson, Junction City, Kansas 66441 and Officer Richard Howard, Junction City Police Department, Municipal Building, Seventh and Jefferson, Junction City, Kansas 66441.

The City of Junction City appears by and through it counsel, Mr. David R. Platt, City Attorney, Municipal Building, Seventh and Jefferson, Junction City, Kansas 66441. Also appearing on behalf of the City of Junction City were Mr. John F. Higgins, City Manager, Municipal Building, Seventh and Jefferson, Junction City, Kansas 66441 and Chief Jerry E. Smith, Chief of Police, Municipal Building, Seventh and Jefferson, Junction City, Kansas 66441.

PROCEEDINGS BEFORE THE BOARD

1. Petition for unit determination filed by Junction City Police Officers Association on February 16, 1984.

2. Petition submitted to City of Junction City for answer on February 16, 1984.

3. Answer to petition received from City of Junction City on February 23, 1984.

4. Answer of City of Junction City submitted to Junction City Police Officers Association on February 27, 1984.

5. Pre-hearing scheduled for 10:00 A.M., March 15, 1984, in City Manager's Office, Junction City, Kansas, before Paul K. Dickhoff, Jr. (Notice sent March 8, 1984)

6. Pre-hearing conducted on March 15, 1984. All parties in attendance.

7. Formal hearing scheduled for 10:00 A.M., April 17, 1984, in City Commission Room, Junction City, Kansas, before Jerry Powell. (Notice sent March 26, 1984)

8. Formal hearing conducted on April 17, 1984. All parties in attendance.

## FINDINGS OF FACT

1. That the Junction City Police Officers Association is an employee organization and the appropriate petitioner in this matter.

2. That the City of Junction City is the appropriate respondent in this matter.

3. That the Junction City Police Officers Association has stipulated to the exclusion of Captains from the appropriate bargaining unit in this matter. (T- 89)

4. That Lieutenants are normally the highest ranking officers on duty from the hours of 5:00 P.M. until 8:00 A.M. on weekdays except Mondays and all day on Saturdays. (T - 33, 40, 46)

5. That Lieutenants and Sergeants are responsible for performing patrol duty. (T - 38, 39, 53, 54)

6. That Lieutenants have authority to reprimand and to temporarily suspend. (T - 40)

7. That Lieutenants have participated in the hiring process. (T - 41)

8. That Lieutenants perform evaluations on potential promotees. (T - 42)

9. That recommendations made by Lieutenants relative to discipline are followed a majority of the time. (T - 43)

10. That Captains normally concur with the disciplinary recommendations of Lieutenants. (T - 44)

11. That the General Orders of the Junction City Police Department generally define the Chief, Assistant Chief, Captains, Lieutenants and Sergeants as supervisors. (T - 47, 57, Petitioner's Exhibit #1)

12. That the Sergeants assume the duties of the Lieutenants in their absence. (T - 48)

13. That Sergeants have the ability to temporarily suspend subordinate officers. (T - 49)

14. That a "to-through" letter may be issued by any officer of the police department. (T - 22)

15. That a "to-through" letter may be written regarding any subject. (T - 50)

16. That, with the exception of Sundays and 5:00 P.M. Monday until 8:00 A.M. Tuesday there is routinely an officer of the rank of Lieutenant or higher on duty at all times. (T - 28, 33, 73)

17. That the Sergeant seeks the approval of the Lieutenant on duty prior to taking disciplinary action against a subordinate officer. (T - 74)

18. That the Sergeant would contact a superior officer if a "serious incident" occurred during the time he was the ranking officer. (T - 75)

19. That the reports completed by the officers are normally reviewed by the Lieutenant on duty. (T - 78, 79)

20. That the Sergeant assigns subordinates to patrol areas (beats) in the absence of the Lieutenant. (T - 80)

CONCLUSIONS OF LAW - DISCUSSION

The instant case comes before the Public Employee Relations Board on petition of the Junction City Police Officers Association. The Association originally requested that the scope of the appropriate bargaining unit be found to include the classifications of Patrolman, Corporal, Sergeant, Lieutenant, Captain and to exclude all others. The city contends that Captains, Lieutenants and Sergeants are supervisors in accordance with the Public Employer-Employee Relations Act definition as set out at K.S.A. 75-4322 (b). At the conclusion of the formal hearing in this matter, the Junction City Police Officers Association stipulated to the exclusion of Captains from the bargaining unit and the hearing examiner will, therefore, only address the classifications of Lieutenant and Sergeant in this order.

K.S.A. 75-4322 (b) defines a "supervisory employee" as:

> "(b) 'Supervisory employee' means any individual who normally performs different work from his or her subordinates, 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 a preponderance of such actions, 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. A memorandum of agreement may provide for a definition of 'supervisory employees' as an alternative to the definition herein."

As might be expected, seldom do the duties of most employees clearly coincide with or parallel the textbook definition cited above. More often, close study of a position will show that the employee has authority in some of the areas, assumes authority in others, offers recommendations in yet others, and is unsure in still others. The task of the examiner is to unravel the evidence presented and to compare the actual performance to the statutory definition in a

logical fashion. This examiner places no greater emphasis on one portion of the definition of "supervisory employee" than on any other but believes that his decision must consider the statute taken as a whole. Certainly, public employers have the right to effective supervision, and likewise, "public employees" have the right to be represented by certified employee organizations. The determination of the point at which an employee ceases to be merely an employee and becomes a supervisor is never an easy task. That task becomes more difficult when dealing with a paramilitary structure such as a police or fire department. Previous orders issued by this Board have recognized that problem and attempted to deal with it in a just fashion. There is, however, no easy rule of thumb that one can apply to this dilemma to arrive at an easy answer. The instant case again emphasizes this problem.

The evidence and exhibits in this case indicate that the city wishes to have certain ranks of employees identified as supervisors. Those same exhibits, however, indicate to the examiner that all employees are required to recognize and respect the entire established chain of command. They also allow and even mandate ranks below Sergeant to "maintain discipline" and to initiate the so called "to-through" letters which could address misconduct, rule infractions or any other subject. As mentioned earlier, in a paramilitary organization it is quite common to find great emphasis placed upon the rank structure and the chain of command. The examiner is not convinced, however, that the rank of Sergeant is endowed with sufficient independent latitude to be considered a supervisor. Certainly, Sergeants could be considered in much the same light as a "line foreman". They review the work of other line officers, they assume control of "situations" until the arrival of superior officers, they patrol the entire city to provide backup when and where needed, and by General Order they perform the same supervisory duties as their Lieutenant, "insofar as practical". It is important to note, however, that the police department provides service during the entire week while Sergeants are the ranking officer only on Sundays and a portion of Mondays. In addition, testimony indicates that even during those times, a Sergeant would contact a superior officer if confronted with a "serious incident". During the time the Sergeant is the ranking officer, there can be little doubt that some independent

judgment is exercised. The great majority of the time, however, the Sergeant has a superior officer to whom he may turn for assistance and supervisory decisions.

As one studies the statutory definition of a supervisor and compares it with the evidence offered, there are very few supervisory functions performed by the sergeant which allow much discretion or latitude to exercise independent judgment particularly in regard to hiring, transfer, lay offs, recalls, promotions, discharges or the adjustment of grievances. The Sergeant does have a bit greater latitude in the areas of assignment, temporary suspension, and some forms of discipline via recommendation. The preponderance of the time, however, in the opinion of this examiner, the Sergeant performs substantially the same duties as the Patrolmen.

For the above stated reasons, it is the recommendation of the examiner that the rank of Sergeant be included within the appropriate bargaining unit.

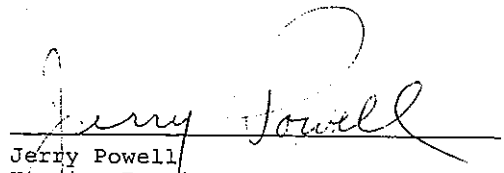
Lieutenants, in the opinion of the examiner, fulfill a signifcantly different function than the Sergeants. Undoubtedly the Lieutenants patrol the streets a portion of their active duty time. The General Orders direct the Lieutenants to remain on the streets except under certain circumstances. Those same orders, however, specifically make the Patrol Lieutenants responsible for the total patrol function including direction, coordination and control. They are responsible for the inspection of the officers and equipment to be used on patrol, the police department building, the cellblock and the security of the prisoners. The orders go on to instruct the Lieutenant to evaluate his observations and to issue a memorandum to the Division Captain citing any deficiencies he identifies. There can be no doubt that, in order to insure proper performance, the employer must rely on someone to observe the employees "on the job". As stated earlier, the Sergeant performs that function a small percentage of the time. The vast majority of the time, however, the Lieutenant is the ranking officer "in the field", and fully half the time is the ranking officer "on duty" in the department. The responsibility for the "entire patrol function", coupled with the firsthand observation of performance and the amount of time devoted to that function leads the examiner to believe that the Lieutenant truly fills the roll of a "first line" supervisor.

In summary, the examiner believes that the Patrol Sergeant serves in the capacity of a supervisor in the absence of the Patrol Lieutenant which constitutes a minor portion of his duty time. That supervision exercised by the Sergeant is relinquished upon the arrival of a superior officer who may even be summoned for assistance during his off duty time in serious incidents. In the majority of his duty time, the Sergeant performs duties which are substantially similar to other Patrolmen. He may be considered a senior patrol officer, a line foreman, or a shift leader and surely his knowledge, experience, and expertise in police work should be recognized by his fellow officers and utilized by his superiors. His guidance, direction and part-time supervision of Patrolmen do not, however, qualify him as a supervisor in accordance with the definition and intent of K.S.A. 75-4321 et seq.

Lieutenants, unlike Sergeants, do perform a number of duties outside the pure patrol function. They are the senior officer "in the field" the majority of the time. They relieve subordinate officers and take command of situations in the field to which they are summoned. They are the first link between field officers and headquarters officers. And finally, testimony has indicated that subordinate officers would seek approval of the Lieutenant, if he were on duty, prior to initiating any disciplinary action. In the opinion of this examiner, the city has endowed the Lieutenants with sufficient supervisory authority for that class to meet the statutory definition of a supervisor.

It is, therefore, the recommendation of the hearing examiner that Sergeants be included within the appropriate bargaining unit and Lieutenants be excluded from the bargaining unit as "supervisory employees".

It is so recommended this 8th day of June, 1984.



Jerry Powell
Hearing Examiner
Public Employee Relations Board
512 West Sixth Street
Topeka, KS 66603-3178

The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

IT IS SO ORDERED THIS 18th DAY OF June, 1984, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.

James J. Mangan, Chairman, PERB

Louisa A. Fletcher, Member, PERB

Lee Ruggles, Member, PERB

Art J. Veach, Member, PERB

Absent
Robert L. Kennedy, Member, PERB